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Impact of Armed Conflict on
Children
(A Case Study of Nepal)

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Summary

The purpose of this essay is to how internal armed conflict in Nepal affected children. Besides that how Nepal has implemented the UN Convention on the Rights of Child during the conflict. It has been estimated that over 2 million children have been killed in armed conflict, another 6 million have been rendered permanently disabled and more than 250, 000 children continue to be exploited as child soldiers. Today, in over 30 situation of concern around the globe, children are being brutalized and callously used to advance the agendas of adults. Increasingly children are the primary casualties of war.

In the context of Nepal, The Maoist insurgency, which started in 1996, has caused widespread violence throughout the country and cause of that killed more than 13000 people till end of 2006. Among them more than 475 are children. According to child rights organisation in Nepal, at least 32550 children were abducted in different parts of country within 10 years war. In Nepalese conflict both parties have been violating the rights of children. During insurgency period many school have been closed, many students have been abducted, many student became a child soldier. And cause of that thousands of family internally displaced and it has huge impact on children too.

The essay describes the monitoring, implementation and enforcing of international law concerning children and armed conflict. I have also looked further into the role of UN agencies in the implementation process. And in connection with that I have analyzed International human rights and humanitarian law relating provision of children in armed conflict.

International law seeks to provide child civilian with protection and care both because children are regarded as a part of the general civilian population and also because children are one of the more vulnerable groups in population. Because of this fact, International law provides special protection and assistance. In addition, In Nepal too most of all UN agencies had focused their wok in Nepal during the war.

Nevertheless, children situation remains same in many ways. Although they have positive affect to aware between conflicting parties and authority about Child rights. Article 38 of CRC mentioned that state party should take all feasible measures to ensure protection and care of children who affected by armed conflict. However, question in my mind “did Nepalese government take all feasible to protect child in time of war? My simply answer in not. In addition, like same rebels have not taken seriously about child protection in time of war. They were also major causes of child rights violation and abuses in Nepal.

Lastly, I want to mention that the impact of armed conflict on children must be everyone’s concern and everyone’s responsibility. One of each individual, each institution, and us must initiate and support global action to support and protect those children who effected from war.

Acknowledgements

Impact of armed conflict on children has been widely discussed within international community since 1990. UN has also given much emphasis on this subject. Like wise, there are many Human rights organisations have engaged in this subject and reported on the topics.

Working with National Human Rights commission in Nepal since 2002, I obtained an interesting insight into this discussion and some of the images of conflict arise in my mind. While time of writing my thesis, I took this opportunity to research this problem in case of Nepal.

Primarily, I am grateful to the Swedish International Development agency and RWI institute for the scholarship that has made me complete this degree. In this respect, I am particularly grateful to my supervisor Prof. Christina Johnson for her guidance and direction from the beginning of the research to the end. I am thankful to all professor and staffs of RWI and especially Asjborn Aide, Afredsson Gudmundor, Ilaria, Lyal, Olof and Maria.

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Abbreviations

AI	Amnesty International
CAT	Convention against Torture
CWIN	Child Workers in Nepal
CPNM	Communist party of Nepal-Maoist
GA	General Assembly
IDP	Internal Displacement Person
IDMC	International Displacement Monitoring Centre
ICC	International Criminal Court
ILO	International Labour Organisation
ICCPR	International covenant on civil and political Rights
ICESCR	International Covenant on Economic, social and cultural rights
ICRC	International Committee of Red Cross
NGO	Non- government Organisation
NHRC	National Human Rights Commission
OHCHR	Office of the high commissioner for Human Rights
PLA	Peoples liberation army
RNA	Royal Nepal Army
SC	Security Council
SPA	Seven Party Alliance
SCSL	Special Court on Sierra Leone
TADO	Terrorist and disruptive ordinance
UN	United Nations
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Educational, scientific, and cultural organisation
UNICEF	United Nations Children's Fund
UPF	United peoples Front
UNMIN	United Nations Mission to Nepal
NCBL	Nepal Campaign to ban Landmines

This work is dedicated to all children affected by conflict in Nepal.

**“If we wish to create a long lasting peace,
We must begin with children”**

Mahatma Gandhi

CHAPTER ONE

1.1 Background

Today in over thirty situations of concern around the globe, children are forcefully compelled to advance agenda of adults. It is estimated that over two million children are already killed; six million rendered permanent disability; and more than two hundred fifty thousand children continue to be exploited as child soldiers¹. In 2006, more than 18 million children were displaced by war and more than 43 million are out of school due to conflict.²

In 1996, Nepal Communist Party (Maoists) started an insurrection against the state. Because of the so-called People's War, today, Nepal is dallying in the crossroad of peace and war. Since 1996, 13347 people were killed until Dec 2006³. A decade long insurgency has left at least 500 children killed by both the State and Maoists. As a human rights professional in same country, I had couple of year's experiences to monitor the Human rights situation that inspired to write my graduate thesis in this subject. I had opportunity to work in child issues especially with children in armed conflict. I came across many pity experiences that how children condition was in Nepal during the conflict period and still there are some kinds of similar problem children are facing by state and non-state actor.

It is well known that war affects children most. Millions of children injured, maimed or killed; forced to take part in combat; orphaned and displaced; subjected to cruel and inhumane treatment and deprived of the basic rights. Above all, they witness heinous attacks and massacre. Psychologically and physically, such incidents cause to inhibit natural growth of the witness.

¹ UN Doc. A/61/275, page 4, Para 11.

² UNICEF executive director Ann M veneman speak at the formal presentation of the Machel 10 year strategic review to the third committee of UN General assembly, can be seen http://www.unicef.org/protection/index_41265.html

³ From the Insec online , Human rights violation data , can be seen <http://www.inseconline.org/hrvdata.php>, last visit 11sep 2007.(Insec is the Human rights Ngo based in Nepal)

The United Nations convention on the rights of the Child (CRC) adopted by UN General Assembly in 1989 is one of the most widely ratified International Human Rights Treaties. Probably, it is considered as one the most universally accepted human rights documents in the field of human rights law. In 1990, Nepal became a party of CRC and ratified without reservation.

1.2 Statement of Problem

Although, CRC is a widely accepted human rights document and binding for all countries who accepted it. It is well known fact that every internal armed conflict children have great risk and vulnerability. Likewise, in Nepal, children have been facing same kind of problem. In one hand, Nepal is a party of Child Rights Convention and in other hand, various international organisations focus over the same issue for several years but also the children are part of grave crimes without the fundamental human rights being protected. The UN has called for further action in the field of protection of child right through various researches and recommendations, for example in 1996 United Nations study on the impact of armed conflict on children, in 2003 UN study on violence against children and set up mechanism for UN special Representative for children and armed conflict.

It seems that since Nepal ratified Child rights Convention and committed to international community that it protects human rights in any circumstances, though theoretically. While practically, in time of armed conflict there were gross and systematic violations. The study will analyse that to which extent internal armed conflict affected child rights and how has Nepal failed to protect children during conflict. The study analyses that whether Nepal has used all resources for the protection of children not only civil and political rights but also economic, social and cultural rights as well. What was the role of international community to protect children in case of Nepal and in which extent they are success or failure in this regards.

My recommendation would emphasize on how to create better environment to enhance the child's development.

1.3 Aims and Objective of Study

The aim and objective of this study is to examine how internal armed conflict affects children. This study further examines the international legal obligation that states have assumed for the protection of the right of child in case of Nepal. The study also critically analyse Nepal's implementation of these obligations on the ground through an analysis of the domestic legal framework and its effects on children during armed conflict. Essentially, the emphasis of this research is to analyse the loopholes or inadequacy of the laws intended to protect the children in times of armed conflict. Finally, to make proposals regarding in which way countries as Nepal can protect children during armed conflict more effectively. In addition, recommendation to concern stakeholder for further protection of children.

1.4 Literature Review

The world conference on Human Rights, welcoming the early ratification of the convention on the rights of the child by a large number of states urges universal ratification of the convention by 1995 and its effective implementation by state parties through the adoption of all the necessary legislative, administrative and other measures and the allocation to the maximum extent of the available resources⁴.

The Issues related to children had been discussed at League of Nations 1924 as well as United Nation in 1959. In this, regards UN celebrated 1979 as an International year of the child. The Convention on the right of the child was adopted by the General Assembly of the UN by its resolution 44\25 of 20 November 1989.

The international law of the child is primarily concerned with the two branches of public international law, international human rights law and humanitarian law, which are concerned with the conduct of armed conflicts.

⁴ Vienna Declaration and programme of action, part I, Para 21, Adopted by the World conference on Human rights, Vienna, 25 June 1993.

The concept of children's right is a new subject in international law. A comparative history in the development of the law show that even in the contemporary developed world, some jurisdictions had, in the 19th century, not enhance laws protecting children.

An early awareness about child rights is found in Jean Valles's novel *L'Enfant*, written in 1879 in the aftermath of the Paris commune. However, Valles, concerns, like those of child-saving movement, which spawned the juvenile court, the orphanage and the model school, was with children's welfare and protection rather than with the child as an individual⁵.

In United States of America, the children rights movement was born in 1800 with orphan train⁶. In the big cities, when child parents died, the child frequently had to go to work to support him or herself. Boys generally became factory or coal workers, and girls became prostitutes or saloon girls, or else went o work in a sweatshop. All of these jobs paid only starvation wages⁷.

There was small-scale initiative to protect child from different individual country in 19th century however, the first effective attempt to promote children's right was the Declaration of the Rights of Child drafted by Eglantine Jebb in 1923 and adopted by league of Nation in 1924.

International law gradually developed after that UN introduces Convention on the Right of Child 1989 and it is only one document, which has been ratified almost all UN member countries except USA and Somalia.

In the conflicts of recent years, children have increasingly been victimized as both the targets and the perpetrators of violence. Almost one-half of the world's 21 million refugees are children, while it is estimated that another 13 million children have been displaced within the borders of their own countries. Approximately

⁵ Michael freeman, children's rights , Dartmouth publication , England, 1996, page1

⁶ Can be seen in http://en.wikipedia.org/wiki/Orphan_train#Fostering_and_the_.E2.80.9COrphan_Trains.E2.80.9D, last visited 1st oct, 2007

⁷ Ibid

300000 children under the age of 18 have been coerced or induced to take up arms as a child soldier. UNICEF data indicate that, during the decade between 1986 and 1996, armed conflicts killed two million children, injured six million, traumatized over ten million and left more than one million orphaned⁸.

International Law further developed to protect children from armed conflict. In this regards optional protocol on the involvement children of Armed Conflict (2000) is a major UN Convention. Although large numbers of countries are still to ratify it optimistically, the number is added every year. Other landmark document in this field is Rome statute of the international Criminal court 1998, Geneva Convention (1949) and additional protocol I and II (1977). In these documents, there is some provision dealing about children, primarily focusing in areas to protect children affected by the armed conflict that would be discussed in next chapter. There are some regional instruments focusing on the same issue. One of the influential documents is African Charter on the Right and Welfare of the African child 1999. In Asia, there are no such instruments.

In case of Nepal, there are few studies regarding child rights have been conducted but the problem area this research focuses have not been found, so far. Although some International Non-government Organisation has produced, some reports in this topic.

Recently one book published by president of CWIN Nepal⁹ that entitled “Yuddhako bhumarima Balbalikahuru” which emphasis tragic situation of children in armed conflict¹⁰.

1.5 Methodology

The study is desk-based research to the extent that is based on International and national legal materials. Government reports, UN reports, Press note, Non-

⁸ UNSG Report S\2000\712, Children and armed conflict, can be seen <http://daccessdds.un.org/doc/UNDOC/GEN/N00/529/46/PDF/N0052946.pdf?OpenElement,para 2>

⁹ Established in 1987, child workers in Nepal concerned centre (CWIN) is a pioneer organisation in Nepal for the rights of child.

¹⁰ www.cwin.org , last visited 15th Oct 2007

government organisation reports and National Institution's annual reports and related books and Journals are examined. Most of materials are taken from internet. The study also examines various cases including those of National Human Rights Commission as well as UN agencies reports regarding subject.

1.6 Structure

The study is divided into five chapters. First chapter is an introductory. The second chapter analyse the international legal framework for the protection of the child. In addition, this chapter further elaborate on regional and other mechanism of child protection during conflict. Third chapter discusses elaborates on the impact of armed conflict on children in Nepal. The chapter further elaborate on internally displaced children and refugee and its socio economic effects due to conflict in Nepal. This chapter is core area of my thesis.

Second last chapter focuses on international mechanism to protect children during armed conflict. Moreover, this chapter mainly discuss on what was the impact of international stakeholders to protect children during armed conflict in Nepal. Besides, the chapter examines the international actor's success or failure to intervention in case of Nepal.

The last chapter deals with conclusion and offers few recommendations how to protect child in any future conflicts situation in Nepal to be generalized in global context of outbreaks.

CHAPTER TWO

International Human Rights and Humanitarian Law Relating to Children in Armed Conflict

2.1 Introduction

According to Philip Allott, law is purposive human activity, a particular species of willing and acting, so that it is necessarily action of moral significance, action which is subject to moral duty and which gives rise to moral responsibility. Moral duty-the duty to do good and avoid evil- attach to the participation of individual human beings in law-making, law applying, law-enforcing and law-abiding¹¹.

The aim of this chapter is clear from the above quotation. Thus, the principal aim of this chapter is to summarize principles of international human rights and humanitarian law, which form an integral part of the legal regime applicable to children in armed conflict. The underlying notion is to show that all the main treaties and provisions of international human rights and humanitarian law has a greater extent for the special attention of children in the sense of granting them additional protection and assistance in time of war or normal situation. In an extremely difficult situation like internal armed conflict, these instruments have greater significance and applicability.

Human rights law address the behaviour of states in their internal affairs and their relation to their citizen, as personified by the respective governments. It deals with acts or omissions of government officials and state official in general. However, in case of armed conflict other important party is armed opposition group and their behaviour. In this regards international humanitarian law is more applicable than human rights law but of course human rights law apply in both situation either war or peace.

¹¹ Philip Allott, the concept of international law, page 34,

International law does not refer specifically to child civilians in situation of armed conflict. There are two kinds of major legal documents which can deal with overall child issues. First of its kind deals with the special status and treatment of children while the other is concerned with those particularly relevant to armed conflicts. In this chapter, more focus on children with armed conflict and protection mechanism within the documents.

2.2 Customary International Law

International customary law relevant to the protection of child is founded in human rights and humanitarian law. Human rights law is the case that the domestic law of practically every state of the world prohibits torture, and states are generally agreed, in theory, that there is rule of international law forbidding it; yet there is no doubt that torture continues to be widely practised¹².

As a customary international law human rights principle, the prohibition on arbitrary deprivation of life can apply equally in times of peace and time of conflict, and even states are in principle, obliged to observe this norm in all conflict situation. In international humanitarian law, the broad ratification of the Geneva Convention IV and to a lesser extent the 1977 protocols again indicates widespread support of possible customary status of the notion of special treatment to children.

In January 2002, a special court for Sierra Leone (SCSL) was established by an agreement between the UN and the government of Sierra Leone. On 31 May 2004, in the case of Prosecutor V. Norman, the SCSL stated that the enlistment of child soldiers has been prohibited in customary international law and was the subject of international criminal responsibility¹³.

Two judicial issues in 2004 and 2005 signal major advances in the protection of the rights of the child, in particular from the standpoint of customary international law. On 1 March 2005, the supreme court of the United States held that imposition of the

¹² Malcolm D. Evans, *International Law*, Oxford University Press, second edition, the source of international law, page 124

¹³ Karin Arts and Vesselin Popovski, *International Criminal Accountability and the Rights of Children*, Hague Academic Press, 2005, page 39

death penalty for crimes committed by children was cruel and unusual punishment and therefore unconstitutional¹⁴. The decision confirms the virtual universal abolition of this practice and, thereby, the indubitable entry of norm into the category of customary international law¹⁵.

These two judgements, one by the adhoc international criminal tribunal established by the UN and the other by one of the most important national constitutional court, represent very significant developments in the law concerning the protection of the rights of child in a general sense. They also confirm the importance of customary international law in the field of child rights

2.3 The Charter of United Nations

The United Nation charter is not a specific human right document but it does contain some provisions relevant to human rights¹⁶ but not specially focus on child rights. The charter established the UN to envisage these core principles; to save succeeding generation from the scourge of war; to reform faith in human rights, human dignity and equality; to establish condition for the maintenance international law and justice; and to promote social progress and better standards of life in larger freedom.¹⁷ The charter provides for the establishment of specialised agencies to accomplish the human rights objectives set out in article 55¹⁸.

There are two more provision relating to human rights in this document. One of its purposes is the universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion¹⁹. In addition, in another provision is that all members pledge themselves to take joint and separate action in cooperation with the organisation for the achievements of the purposes set forth in article 55.²⁰ Therefore, through these two different provisions of UN Charter we can conclude that member states pledge

¹⁴ Ibid, page 19

¹⁵ Ibid page 19

¹⁶ Van Bueren G. international law on the rights of child, martinus nijhoff publishers 1988, page 16

¹⁷ UN charter preamble can be seen <http://www.unhcr.ch/html/menu3/b/ch-pream.htm>, last visit 16th Oct.

¹⁸ Art 59 of charter, there are sixteen specialised agencies of the united nation

¹⁹ Ibid, article 55(c)

²⁰ Ibid, article 56

themselves to take necessary action to achieve the observance of human rights and fundamental freedom for all. It clearly emphasizes that these provision are for children as well. Every country is responsible to follow the provision of UN charter including Nepal being one of the signatory members.

2.4 Universal Declaration of Human Rights

The preamble to the Universal declaration of human rights (hereafter UDHR), was adopted by the UN in 1948, states that the highest aspiration of the common people was the “advent of the world in which human being shall enjoy freedom of speech and belief and freedom from fear and want”.²¹ In these foundational human rights documents, civil and political rights and socio economic rights were set out together, as interlocking and interdependent rights. Although UDHR is, a soft law and non-binding nature but which apply to all human beings.²² Therefore, children are included within the scope of its provisions.

One of the provisions is directly linkage with children that “motherhood and children are entitled to special care and assistance. All children are entitled to special care and assistance. All children whether born in or out of wedlock, shall enjoy the same social protection care and assistance”.²³ Because of this provision, state has moral obligation to protect children in any circumstances.

2.5 International Covenant on Civil and Political Rights

The international Covenant on Civil and political rights (ICCPR) has been ratified by 160 states.²⁴ Nepal became a party of this covenant in 14th may 1991²⁵. Although ICCPR has not specific attention towards child, rights but some provision of this convention are concerned with children. In this connection Human rights committee point out that the right provided in article 24 are not only one that the

²¹ UDHR Preamble

²² Ibid , article 1

²³ Ibid , article 25(2)

²⁴ can be seen, <http://www.ohchr.org/english/bodies/ratification/4.htm>

²⁵ Ibid

covenant recognizes for children, and that, as individuals, children benefit from all the civil rights.²⁶

The most notable article in the ICCPR dealing with children is article 24(1), “Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family and the state”.

In accordance to article 24, a child has the right without any discrimination to receive such measures of protection as required by his status as a minor from the family, society and the state.

The ICCPR allows derogation in times of public emergency, which threatens the life of the nation and existence of which, is officially proclaimed.²⁷ In addition, there are certain provisions that do not allow derogating even time of emergency²⁸. One of the provisions is right to life. Human Rights Committee emphasizes in General Comment that state parties should take measures to not only prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own securities forces.²⁹ This particular General Comment has a significant in the issue of right related to life in armed conflict.

2.6 The International Covenant on Economic, Social and Cultural Rights

International covenant on Economic, social and cultural Rights (here after ICESCR) is a one of the most important covenants in the field of human rights law.

²⁶ decision from the human rights committee, Thirty-fifth session 1989, can be seen [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/cc0f1f8c391478b7c12563ed004b35e3?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/cc0f1f8c391478b7c12563ed004b35e3?Opendocument)

²⁷ ICCPR, article 4

²⁸ ICCPR, article 4(2),

²⁹ General comment by Human right committee, general comment no 6, para 2.sixteenth session 1982, can be seen

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/84ab9690ccd81fc7c12563ed0046fae3?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/84ab9690ccd81fc7c12563ed0046fae3?Opendocument)

It has ratified by 157 states³⁰ in the world and shows that it has significant value. Nepal has ratified this convention in 14th may 1991 without any reservation³¹.

The preamble of ICESCR recognizes indivisibility of human rights, acknowledging that all human rights are inter-linked and of equal importance. The key provision of relevance to special measures of protection of children is found in article 10(3) that emphasizes that “special measures of protection and assistance should be taken on behalf of children and young persons without any discrimination for reasons of parentage or other conditions. Children and young people should be protected from economic and social exploitation”.

ICESCR article 2(1) talks about available resources to implement of Economic and social issues, such as right to education (article 13), right to health (article 12), right to food (article 11) etc. Due to such provision in covenant, state has a chance to escape from their obligation. Although the committee further elaborates in their General Comment on that full realization of the relevant right may be achieved progressively, steps towards that goal must be taken within a reasonably short time. Steps should be deliberate, concrete and targeted as clearly as possible.³²

Like other conventions, this also implies for children as well. This may be relevant that how important this convention and its provisions that can be seen from Graca Machel³³ reports. One of the most basic reasons that children join armed groups is economic³⁴. Hunger and poverty may drive parents to offer their children for service. Children themselves may volunteer if they believe that this is the only way to guarantee regular meals, clothing or medical attention.³⁵ While reading reports from Machel I must say that relevance with Nepalese context as well. Many Nepali children joined armed groups because of those reasons that Machel pointed out.

³⁰ can be seen <http://www.ohchr.org/english/bodies/ratification/3.htm>

³¹ Ibid

³² General comment no 2, the nature of state parties obligation, fifth session, 1990. can be seen [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument)

³³ the expert appointed by secretary-general on 8th June 1994, pursuant to general assembly resolution 48/157 of 20 Dec 1994. She prepared report impact on armed conflict on children in 1996.

³⁴ Graca Machel reports, A/51/306, para 39, page 17.

³⁵ Ibid

27 The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The convention against torture and other cruel, inhuman or degrading treatment or punishment (here after CAT) is one the core six treaties of human rights field. It has opened for signature by united nation general assembly (UNGA) resolution 39\46 in 10 Dec 1984³⁶. In addition, came into force on 26 June 1987 in accordance with article 27(1) of CAT convention³⁷. Until now, there are 145 parties to this convention and Nepal became a party to this convention in 14th may 1991³⁸.

Article (2) of CAT convention is an important clause that provides that “each state party shall take effective legislative, administrative, judicial or other measure to prevent acts of torture in any territory under its jurisdiction”.

Torture is prohibited by CAT convention. No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment³⁹. In addition, it is non-derogable even in time of public emergency⁴⁰. This provision is one of the strong legal provisions related with torture. In this circumstance, children have to be protected from torture in any circumstances either in war or in peace. This is fundamental duty of states.

2.8 Human Rights Instruments Specific to the Rights of Child

The 1924 declaration on the rights of child, the 1959 declaration on the rights of child, the 1989 convention on the right of child and optional protocol to the right of child on the involvement of children in armed conflict is the most important law that related with children and armed conflict. Among them both declaration are non-binding nature but convention and optional protocol are binding in nature.

³⁶ can be seen <http://www.ohchr.org/english/bodies/ratification/9.htm>

³⁷ Ibid

³⁸ Ibid

³⁹ Article 7 of ICCPR

⁴⁰ Article 4 (2), ICCPR

There might be questions why should special body of rules regard the protection of children in armed conflict? For sure, we all know existing law of armed conflict applies to all children and adults. Although children in armed conflict may have many similar experience to those of adults, younger children, especially, are physically more vulnerable and almost all children are economically, politically, and militarily powerless in such situation.

2.8.1 The 1924 Declaration on the Rights of Child

It is the first international instruments about child rights. In 1924, the fifth assembly of the League of Nations adopted the declaration of the rights of the child⁴¹. Declaration of rights of child commonly known as the Declaration of Geneva, men and women of all nations, recognising that humankind owes to the child the best it has to give⁴². There are five principles of the 1924 declaration.

The text of the declaration aims at simplicity, and is capable of being applied everywhere and at all times⁴³. It is principally concerned with the provisions of children's economic, psychological and social needs; hence, the language is more appropriate to the field of child welfare⁴⁴.

In connect with conflict, third of five principle of the declaration stand for the protection of child in time of conflict also. It is clearly mention that children should be granted priority in receiving assistance particularly in time of distress, such time may be in conflict.

The declaration is also evidence that the early development of international human rights law was not exclusively concerned with the development of civil and political rights, as the declaration highlights the economic and social entitlements of children.⁴⁵

⁴¹ Records of the fifth assembly, supplement no 23 league of nation official journal 1924

⁴² Van bueren, International Law on the right of child, Martinus Najtioff publishers, 1998, page 6.

⁴³ Ibid, page 7

⁴⁴ Ibid , page 7

⁴⁵ Ibid, page 8, para 2

2.8.2 The 1959 Declaration on the Rights of the child

On 20 November 1959, the General Assembly adopted the declaration of the rights of child. The adopted Declaration of the rights of the child consists of the preamble and ten principles. In accordance with the declaration, a child is entitled to a name and nationality,⁴⁶ to adequate nutrition, housing, recreation and medical services⁴⁷. In addition, declaration emphasis to the special needs have physically, mentally and socially handicapped children⁴⁸, and children who are without family.⁴⁹ The right to education is included, as is the right to play and recreation⁵⁰. A noticeable departure from the principle of the 1924 declaration is that the earlier declaration specified children “must be the first to receive protection and relief”, where as 1959 declaration lays down that children shall be “among the first” to receive protection or relief⁵¹. In addition, children are entitled to special protection and that such special protection should be implemented by reference to the best interests of, the child⁵² and last clause mention that non-discrimination.⁵³

Principle 2 of declaration is most relevant to the protection of the child in armed conflicts. It emphasis that,

“the child shall enjoy special protection, and shall be given opportunity and facilities, by law and by other means, to enable him to develop, physically, mentally, morally, spiritually and socially in a healthy and normal manner in a condition of freedom and dignity. In the enactment of laws for this purpose the best interest of the child shall be the paramount consideration”

Although it is a non-binding resolution of general assembly, the fact that it was adopted unanimously accords it is greater than other general assembly Resolution⁵⁴.

At its lowest, unanimous adoption by the general assembly implies that the

⁴⁶ Principle 3 of declaration can be seen, <http://www.cirp.org/library/ethics/UN-declaration/>

⁴⁷ Principle 4 of declaration on the rights of child 1959

⁴⁸ Principle 5th of declaration on the rights of child 1959

⁴⁹ Principle 6 of the declaration on the right of child 1959

⁵⁰ Principle 7 of the declaration on the right of child 1959

⁵¹ Supra note 41, page 10.

⁵² Principle 9 of the declaration on rights of child 1959

⁵³ Principle 10 of the declaration on the rights of child 1959

⁵⁴ Supra not 41, page 12

declaration has a moral force because its principle has the approval of all the member states of the United Nations⁵⁵.

2.8.3 The Convention of the Rights of the Child (CRC)

The convention on the Rights of child was adopted by the General Assembly the UN by its resolution 44\25 of 20 November 1989⁵⁶. The convention on the rights Child is the latest series of comparatively recent treaties, which recognize that individual has a status under international law and by which states agree to be bound in order to implement specific rights to all individual and additional rights to specific groups of individual.⁵⁷ It is one of the widely ratified international treaties in the world.

The convention on the rights of child is concerned with the four `p`: the participation of children in decisions affecting their own destiny; the protection of children against discrimination and all forms of neglect and exploitation; the prevention of harm to children; and the provision of assistance for their basic needs⁵⁸. The convention covers the full range of civil and political rights as well as economic, social and cultural rights of children. This treaty is special in terms of it is not only concerned with the granting and implementing of rights in time of peace, but it also concerned with the regulation of armed conflicts⁵⁹. Within the human rights system, the CRC is rather exceptional since it includes a provision that traditionally belongs to the field of international humanitarian law (IHL).⁶⁰

⁵⁵ Ibid, page 12, para 3

⁵⁶ UN convention rights of child 1989.

⁵⁷ Van Bueren G., The international law on the rights of child, martinus Nijhoff publishers, 1998 page 13.

⁵⁸ Ibid, page 15

⁵⁹ Ibid, page 16

⁶⁰ Fiona Ang, A complementary on the United Nations convention on the rights of child, article 38, Martinus Nijhoff Publishers 2005.

Article 38 of CRC is applicable to all types of armed conflict⁶¹. Main focus of this research is to deal about children and armed conflict. In this regards article 38 is relevant for further discussion. Provisions of Article 38 are⁶²:

- State parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts, which are relevant to the child.
- State parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen do not take a direct part in hostilities.
- State parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces, in recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, state parties shall endeavour to give priority to those who are oldest.
- In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflict, state parties shall take all feasible measures to ensure protection and care of children who are affected by armed conflict.

Article 38 of CRC addresses specifically the issue of children and armed conflict and it requires state parties to respect the rules of international Humanitarian law. Article 38 suffers from two major shortcomings. First, the focus of article is on child soldiers and it fails to raise existing standards, leaving the age of recruitment at 15 years, some 3 years lower than article 1⁶³ definition of child⁶⁴. Furthermore, article 38 is in direct conflict with the CRC's own provision on child labour under article 32(1). which commits state to protecting children (person under 18) from performing any work that is likely to be hazardous or to interfere with the child's

⁶¹ Ibid, para 31, page 23.

⁶² Convention on rights of child 1989, article 38

⁶³ Article 1 of CRC, For the purpose of the present convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

⁶⁴ Fottrell Deirde, Revisiting Children Rights, Kluwer law publisher, page 8

education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development⁶⁵.

During conflict or post conflict, article 39 of the convention is also important for social reintegration of child victim. Provision of this article is concerned with child victim of armed conflict or any other cause. The potential of article 39 to assist child victims of armed conflicts is wide, and indeed such rehabilitation has already occurred in small number of pioneering schemes. In Uganda, after the end of civil war the government was face with the integration of three thousand child soldiers into the school system⁶⁶. In Mozambique the government, together with the save the children established the rehabilitation centre to assist children who were abducted into the Mozambique National Resistance and forced to witness or participate in killing⁶⁷.

The convention also imposes new obligation relation to the provision and protection of children. These include the obligation on a state to take effective measures to abolish traditional practices prejudicial to the health of children⁶⁸. There are some provision that relates with health and education. Primary education shall be free and compulsory; state shall protect children from economic exploitation; children from minority and indigenous population shall freely enjoy their own culture, religion and language; disable children have right to special treatment, education and care, capital punishment or life imprisonment shall not be imposed for crimes committed before the age of 18 and so on.

The convention has relatively weak implementation system, which is common to other universal human rights treaties, which is essentially a system of self-assessment based on the submission of periodic reporters by state parties⁶⁹. No provision was made for individual petitions or inter-state challenges. A committee

⁶⁵ Ibid, page 9

⁶⁶ Supra note 56, page 348

⁶⁷ Ibid, page 348

⁶⁸ CRC , article 24(3)

⁶⁹ Fottrell Deirde, Revisiting Children Rights, Kluwer law publisher, page 6

of expert monitors the CRC⁷⁰. States are required to submit an initial report within two years of ratification and periodic reports every five years thereafter⁷¹.

2.8.4 Optional Protocol to the Convention on the Rights of Child on the Involvement of Children in Armed Conflict, 2000

The optional protocol to the convention on the rights of child on the involvement of children in armed conflict adopted by general assembly resolution A/RES/54/263 in 25 May 2000. Moreover, it became entry into force 12 Feb 2002. Within a short period 119 states have become party to this protocol⁷². In addition, Nepal became party to this protocol 3 January 2007⁷³.

Preamble of this protocol clearly pointed out that harmful and widespread impact of armed conflict on children and the long-term consequence it has for durable peace, security and development⁷⁴. In addition, it emphasizes on rights of children requiring special protection.

Optional protocol of child rights convention fills the gap of CRC. State parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take part in hostilities⁷⁵. In CRC, this provision was highly critical and mentions that 15 years of age⁷⁶ for those who take part in hostilities. Likewise, article 4 of this protocol directs towards armed groups (non-state actors). Armed groups that are distinct from the armed forces of a state should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years⁷⁷. This is one of the important provisions of this protocol, which makes responsible non-state actors as well towards protection of child.

⁷⁰ Article 43 of CRC

⁷¹ Article 44 of CRC

⁷² Can be seen http://www.ohchr.org/english/bodies/ratification/11_b.htm

⁷³ Ibid

⁷⁴ Preamble of Protocol of CRC on children and armed conflict

⁷⁵ Article 1 of optional protocol of rights of child on children in armed conflict

⁷⁶ Article 38 of CRC

⁷⁷ Supra note 74, article 4(1)

2.9 Rome Statute of International Criminal Court 1998

In July 1998, the Rome statute of the International Criminal Court was opened for signature and ratification. It entered into force on 1 July 2002⁷⁸. The establishment of the International Criminal Court (here after ICC) provided an independent judicial mechanism of international accountability for crime of genocide, crimes against humanity, War crimes and the crime of aggression⁷⁹.

Article 8(2) (b) (xxvi) classifies “conscripting or enlisting children under the age of fifteen into the national armed forces or using them to participate actively in hostilities⁸⁰” as a war crime both in international and internal armed conflict.

There is landmark case in ICC verses Thomas Lubanga Dyilo⁸¹. Having found that there are reasonable grounds to believe that, during the relevant period, member of the FPLC repeatedly used children under the age of fifteen to participate actively in hostilities in many parts of Uganda⁸².

Still Nepal is not a party of Rome statute.

2.10 International Labour Organization (ILO) Convention 182

Worst form of child labour convention 1999(no 182) has been adopted on 17 June 1999 by the general conference of the International Labour organisation (here after ILO) at its eighty-seventh session⁸³. It became entry into force 19 November 2000⁸⁴. Nepal became a party in this convention 3 January 2002⁸⁵. ILO convention

⁷⁸ Can be seen <http://www.icc-cpi.int/about/ataglance/establishment.html>

⁷⁹ Article 5(1) of Rome statute of International Criminal Court

⁸⁰ The Rome statute article 8(2)(b)(xxvi), can be seen <http://www.icc-cpi.int/about/ataglance/establishment.html>

⁸¹ Thomas Lubanga Dyilo has been president of the UPC since its foundation on 15 September 2000. He is Ugandan national and was arrested by ICC on 10 Feb. 2006.

⁸² ICC charge sheet against Mr Lubanga, can be seen http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-2_tEnglish.pdf

⁸³ Can be seen <http://www.ohchr.org/english/law/childlabour.htm>

⁸⁴ Ibid

⁸⁵ Can be seen http://www.inseconline.org/download/Nepal_treaties.pdf

No 182 define the compulsory recruitment of children for use in armed conflict as one of the Worst form of Child labour and prohibited it⁸⁶.

2.11 International Humanitarian Law and Protection of Child Civilians

The international criminalisation of offences against children dates back to the 1949 Geneva Conventions, which first established special provision for the protection of children in time of war. Article 24 and 50 of the forth Geneva Convention (1949) extend special protection measures to children, making them effective and independent subject of international humanitarian law⁸⁷. Respect and protection of the civilian population is one of the fundamental of humanitarian law, which is based mainly one the principle of distinction between military objectives and the civilian population⁸⁸. It applies in times of war and there is no concept of derogation.

International Humanitarian law provides general protection to children as a person taking no part in hostilities and special protection as persons who are particularly vulnerable.

Article 77 of additional protocol 1 (on international armed conflict) and article 4 of Additional protocol II (on non-international armed conflict) have codified the protection of children in situation of armed conflict⁸⁹.

We are discussing about Nepal in following chapter and Nepalese conflict is non-international character so further discussion in relevant only non-international character of conflict and their applicable with humanitarian law.

According to provision of article 3 of protocol II of 1977, children shall be provided with the care and aid they require, and in particular;

⁸⁶ Article 3(a) of ILO convention 182, can be seen <http://www.ohchr.org/english/law/childlabour.htm>

⁸⁷ Supra note 13, page 38

⁸⁸ Sylvie-stoyanka Junod, protection of the Victim of Armed conflicts, Foklands-Malvinas Islands 1982, International Committee of the red cross, 1985

⁸⁹ Supra note 13, page 38

- They shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care.
- All appropriate steps shall be taken to facilitate the reunion of families temporarily separated.
- Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.
- The special protection provided by this article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions sub-paragraph(c) and are captured.
- Measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well being.

This provision has significant value in terms of special protection of children who have not attained the age of fifteen. Nepal is not party of this protocol but Nepal is party of Geneva Convention 1949⁹⁰. Common articles 3 of Geneva Convention also apply in non-international armed conflict. In addition, article 3 prohibited all kinds of murder, mutilation, cruel treatment and torture. Like wise, it also prohibited taking of hostage, humiliating and degrading treatment⁹¹. This provision is applying in all persons those not taking active part in the hostilities⁹².

⁹⁰ Can be seen http://www.inseconline.org/download/Nepal_treaties.pdf

⁹¹ The Geneva convention 1949, common article 3

⁹² Ibid

The universal and compulsory character of the Geneva Convention⁹³ implies that, military commander could be face prosecution for failure to ensure that children, orphaned as a result of war, are not left their own resources, and that their maintenance the exercise of their religion and their education are facilitated in all circumstances⁹⁴.

2.12 Nepal' s Relation With International Law

After Nepal has ratified an international convention, it makes a new domestic act of the provisions in the convention. According to section 9 of the Nepal Treaty Act 1990 the contents of a subsidiary legislation that is in conflict with an international treaty, to which Nepal is a party, will be invalid in favour of the treaty. That provision of treaty act gives the international treaty prevalence if a conflict between domestic and international law breaks out.

2.13 Conclusion

The treatment of children in situation of armed conflict remains a continuing problem. It has been established that there are large number of human rights law both international and regional. However, in case of Asia there is not any regional provision relating with children. The law establishes that the children, owing to their particular vulnerability ad their significance as the future generation, are entitled to special treatment in case of situation of danger.

The very fact that the CRC has been almost universally ratified is in itself remarkable and it has positive impact over the protection of children rights internationally and domestically.

It is basic need of children to be protected when conflicts threaten, and such protection requires the fulfilment of their rights through the implementation of international human rights and humanitarian law⁹⁵.

⁹³ Supra note 13 page 38

⁹⁴ Ibid

⁹⁵ Report of Graca Machel, Impact of armed conflict of children 1996 , page 48

This chapter revisited the relevant international human rights and humanitarian law provision regarding child rights in time of armed conflict. Again, my question is despite having bunch of provisions to protect children especially in time of conflict but in practice is very different. The only realistic way to ensure protection of children in conflict situation is to eliminate armed conflict itself. I am going to discuss the core subject of my thesis in the following chapter.

CHAPTER THREE

Impact of Armed Conflict on Nepali Children

3.1 Background of Conflict in Nepal

Nepal with its ancient culture and the beautiful Himalaya as a backdrop is a landlocked country that has been independent throughout its history. Nepal is a small South Asian country bordered by China to the north and India to the east, west and south. Its population is just over 26.3 million according to United Nations (UN 2005).

Its modern history dates back to Prithvi Narayan Shah⁹⁶ credited to consolidating Nepal, as a recognizable nation in the eighteenth century⁹⁷. The conquest by Prithvi Narayan Shah of the Kathmandu valley and its surrounding territories in 1769 was a major development in the process of national unification.

In early 1950 Nepal became a democratic country after the overturn of the Rana rule⁹⁸ that initiated the modern political history of Nepal. This led to the restoration of the king as the chief executive power, and in 1959, there was an election for Parliament. In addition, Bishwer Prasad Koirala was first elected as the prime minister in Nepalese history⁹⁹. However, unfortunately in 1962, King Mahendra Bir Bikram Shah issued a royalist constitution establishing a new political structure known as

⁹⁶ The ruler of tiny mountainous state of Gorkha in western Nepal who ruled (1743-1755)

⁹⁷ Stiller L, The rise of House of Gorkha, A study on unification of Nepal, Manjushree, New Delhi 1973

⁹⁸ One of the noble families at that era, in 1846, a bloody consequence called the palace armoury Massacre; it allowed the military commander Jang Bahadur Rana to emerge Nepal de facto ruler. They ruled 104 years in Nepal until 1950 and replaced the power from shah dynasty). Can be seen more Welten J.kings, soldiers and priest: Nepalese politics 1830-1857, ratna pustak bhandar, 1992, Kathmandu.

⁹⁹ In 1959, new constitution entitled the constitution kingdom of Nepal, based upon this constitution parliamentary election was held and Nepali congress party had won 2/3 majority in the parliament. In addition, party leader was Bishwer koirala (BP, his popular name in Nepal).this is the oldest Democratic Party in Nepal.

the “party-less panchayat” system¹⁰⁰. This system banned all political parties and king became supreme of country without opposition. This party –less system led by king ruled over almost 30 years in Nepal.

In 1990, people’s movement downsized the king’s power and hitherto Panchyat System collapsed with creation of a new multiparty parliamentary democracy. The royal institution was incorporated as ‘Constitutional Monarchy’. The constitution outlines the establishment of a multiparty political system, periodic local and parliamentary elections, and a government accountable to the house of representative. Although the period of parliamentary democracy was unstable¹⁰¹, it fostered a rapid increase in civil society organisations that were banned under the panchyat, including political parties, Non-government organisation (hereafter NGO), human rights organisation, media and other professional organisation. In addition, Nepal became a party of most of human rights treaties in this period.

3.2 Maoist Insurgency in Nepal

For the public in Nepal, the Maoists were quite an unknown entity until they burst into the scene in 1996 with their call for an armed rebellion known as the ‘People s War’¹⁰². This is primarily because of the prevalence of numerous small and large groups among leftist parties in Nepal, which were characterized by incessant splitting, merging and re-splitting over the last four decades¹⁰³.

At the election in 1991 little known Maoists burst onto the political scene as the United Peoples Front (UPF), and won the third largest share of seat in parliament. In 1994, the united people’s front, a political alliance of several Nepalese leftist parties split apart. One of its former leaders Pushpa Kamal Dahal (commonly known as Comrade Prachanda), founded the Communist Party of Nepal- Maoists

¹⁰⁰ King Mahendra (Father of present king Gyanendra), sacked the elected government, banned political parties, arrested political leaders and introduced new constitution entitled Nepal’s constitution 1993.

¹⁰¹ Caught in the middle, mounting violations against children in armed conflict, 2005, published by Watch list, a international nongovernmental organisation, page 7.

¹⁰² Adhikari Bipin, conflict, Human Rights and Peace before Nepal, published by National Human rights commission 2003, page 3.

¹⁰³ Ibid, page 4

(Here after CPNM), a radical splinter group of the Communist party of Nepal (Unity Centre). The CPNM claim to have been inspired by the revolutionary principle of Mao Tse Tung¹⁰⁴. In this period mid-term parliamentary election had come around, both fraction of communist party approached the election commission, a constitutional functionary, to be recognized for the election. The one that supported by Nirmal Lama¹⁰⁵ was given the recognition and this was followed by calls for a boycott of election by CPNM.

The Maoist movement formally began with the declaration of a people's War on February 13, 1996, with attacks on various police posts¹⁰⁶, which was four days before the expiry of their 40 points demand with the current government. There was big link between their 40-point demands with recent government before their attacked. On 4 February 1996, CPNM presented the Nepali Congress¹⁰⁷ led coalition government of Prime Minister Sher Bahadur Deuba with a list of 40 demands¹⁰⁸ related to nationalism, republic state, and livelihood¹⁰⁹. These demands were several important issues in all aspects of the political, social and economic lives of Nepali people.

The conflict in Nepal is a social, economic and cultural issue and is produced and sustained by failed development¹¹⁰. One important factor was frustration due to the

¹⁰⁴ Karki Arjun and David Seddon, the Peoples war in Nepal, left perspective 2003.

¹⁰⁵ Late leader of Communist party of Nepal(Unity centre)

¹⁰⁶ Supra note 106, page 9.

¹⁰⁷ One of the old political parties in Nepal. They beliefs on multiparty democracy, socialism and Nationality, establish in 1946, can be seen <http://www.nepalicongress.org/files/introduction.php>

¹⁰⁸ These 40 demands include, Abrogation of 1950 treaty with India, Abrogation of mahakali treaty with India, Border regulation, Discontinue Ghurkha recruitment, Introduce work permit system in Nepal, End imperialistic hegemony, Republic constitution, End royal privileges, Civil authority over army, repeal repressive regulations, release prisoners, End state terrorism, Enquiry on actions against Maoists, Recognition to martyrs and penalty to perpetrators of 1990, Ethnic Autonomy, freedom of speech, freedom of thought, freedom of devolution, local goverence, secular state, equality to women, end ethnic operation, abolish untouchables, equality of languages, access to education and health services, protection of disabled, end capital aggrandizement, self-reliant economy, land to the tiller, Nationalisation of dubious property, employment generation, set minimum wage, resettle squatters, Debt relief, credit provision for poor, cheap input, fair prices for agriculture product, control price, provide road, electricity and water supply to rural areas, promote cottage industries, control corruption. These called 40 points demand. It is famous in Nepalese politics.(From www.cpnm.org), CPNM official web.

¹⁰⁹ Supra note 106, page 8

¹¹⁰ Pandey D.R., Nepal's failed development: reflection on the mission and maladies, Kathmandu Nepal south Asia centre, 1999, Cited by Human rights in Nepal, a status report 2003, page 3, National human rights commission Nepal(NHRC)

lack of fulfilment of expectations of the common people in the aftermath of the restoration of democracy in 1990. An ignorant society marred by poverty, the problem of basic need (food, cloth and shelter), lack of education and health care and related structural inequality, marginalization of ethnic groups and other discriminatory practices, such as the pervasive caste system were enough reason to make the Maoist agenda attractive to the average person¹¹¹. Geographical train of the land, the open border with India, also facilitated the spread of the Maoist movement; weak intelligence in the security forces to deal with the rebellion in the early stage of conflict, the royal massacre of 2001 and change in the monarchy. In sum, the people's frustration with the poor performance of successive government has been the major cause behind the rise of Maoist movement.¹¹²

In the early days of war, the heartland of insurgency is located in the remote western district of Rukum and Rolpa, where the overwhelming majority belongs to the Magar ethnic group. However, it would be wrong to conclude from this that the Maoist movement is predominantly a Magar ethnic movement. Nor do the Maoists enjoy any special support among the lower caste or untouchable groups, such as Dalits. In that respect, the fact that most of the Maoists leadership belongs to upper castes has been something of a political liability, even if the Maoists have overall succeeded in channelling specific caste and ethnic grievances¹¹³.

At the beginning of conflict security operations were conducted by the Nepal police, later reinforced by the armed police force. In November 2001, the Royal Nepalese Army (RNA)¹¹⁴ was mobilized to combat the growing insurgency and in November 2003, the Nepal police and armed police force were placed under the Unified command of RNA for joint counter-insurgency operations.¹¹⁵ The RNA was not deployed until 2001, almost six years after the start of the insurgency, due to the

¹¹¹ Supra note 106, page 16

¹¹² Upreti, Bishnu Raj, "underlying causes of Maoist Insurgency in Nepal: a brief analysis", Informal Vol.16, 3, July 2003. Cited by Adhikari Bipin, conflict, Human rights, peace challenges before Nepal, NHRC publication 2003, page 16.

¹¹³ Farzana Shaikh, A written report commissioned by the United Nation High commissioner for Refugee, Emergency and security services, , page 5, august 2004.

¹¹⁴ Until 18 may 2006, the armed forces of Nepal were referred to as the Royal Nepal Army. Since then the armed force are referred to as the Nepal Army

¹¹⁵ S/2006/1007, Report of the secretary-General on children and armed conflict in Nepal, page 3

king's reluctance to declare state of emergency.¹¹⁶ Maoists was started their war from western Zone of the country but until end of 2006, within ten years, they have access every corner of the country, although their means and method of war was fully violent.

3.3 Peace Process

A Maoist insurgency punctuated by cease-fire in 2001¹¹⁷, 2003¹¹⁸, 2005¹¹⁹ and latest one from 26 April 2006-has been ongoing since 1996¹²⁰. In this period, Nepalese peace process was not success and every day was terrible day in each part of countries. Countries political situation was unstable and almost every year government was changing like a fashionable cloths.

On 1 Feb 2005, King Gyanendra declared a state of emergency, suspending some fundamental rights, including freedom of assembly and expression and rights related to preventive detention. The state of emergency was revoked in April 2005, although the king exercised executive authority directly until April 2006¹²¹. King was citing a steady deterioration of condition of the country; king dismissed the cabinet and constituted the council of minister under his own leadership¹²². He

¹¹⁶ Supra note 114, page 5

¹¹⁷ The first attempt was Feb. 2001, when the Maoist called for a dialogue for the first time. In 27 July 2001, government and Maoist declare cease-fire and announce negotiation, like wise in same year sep and November, there were second and third round negotiation but it was failed to fulfil Maoist demand. In addition, two days later Maoist resumed their attack on Army in first time. In 26 November in 2001, government declares nation wide state of emergency and mobilise army for the first time after 1996.

¹¹⁸ The second attempts of peace talks came on January 29, 2003. That time the first round talks were held on 27th April and the Maoist came with a three-point demand calling for an all-party round table conference, the formation of interim government and the election for the formation of a constitution assembly to draft new constitution. Like wise in same year second and third round talk was on 9 may and 27 august but both parties failed to reach final and Maoist ended the cease-fire.

¹¹⁹ In 3 Sep 2005 Maoist declared cease-fire but recent king, led government did not respond it.

¹²⁰ United states(US) department of state, bureau of south Asia and central Asian affairs, background note: Nepal can be read , last excess 15 Nov 2007,

[file:///C:/Documents%20and%20Settings/Raj/Desktop/americia%20congress-about%20nepal/Nepal%20\(11-07\).htm](file:///C:/Documents%20and%20Settings/Raj/Desktop/americia%20congress-about%20nepal/Nepal%20(11-07).htm)

¹²¹ Supranote 119, page 3, para 6

¹²² Supranote 124, [file:///C:/Documents%20and%20Settings/Raj/Desktop/americia%20congress-about%20nepal/Nepal%20\(11-07\).htm](file:///C:/Documents%20and%20Settings/Raj/Desktop/americia%20congress-about%20nepal/Nepal%20(11-07).htm)

stated that the council of ministers would try to reactive multi-party democracy within three years¹²³.

On 22 November 2005, the seven party alliance¹²⁴ (SPA) and CPNM announce their common adoption of a 12-point “letter of understanding”, including a call for an “end to autocratic monarchy” and the election of a constitutional assembly. The understanding committed CPNM force and RNA would be kept under the supervision of the UN or any other reliable international supervision during constitution assembly elections¹²⁵.

This understanding is milestone of Nepalese peace process. In April 2006, the SPA in cooperation with CPNM organized massive countrywide demonstration for the restoration of democracy; force the king to relinquish power. On April 24, 2006 king reinstated 1999 parliament that was dissolved in 2002¹²⁶. Former PM Girija Prasad Koirala of Nepali Congress Party was selected by the SPA to lead the government¹²⁷. In 21 November 2006, a comprehensive peace agreement was sign by SPA lead government and CPNM to end the decade-long insurgency¹²⁸. Both sides also agreed to an arms management process and election for a constitution Assembly. On 15 January 2007, 329 member interim parliament, including 83 Maoist representative and other SPA representative was constituted. The first sitting of parliament unanimously endorsed an interim constitution, which replaced constitution 1990.¹²⁹ On 1 April 2007 Maoist, also join the interim government.

The interim constitution expressed full commitment to democratic ideals and norms, including competitive multi-party democracy, civil liberties, fundamental

¹²³ Frontline, volume 19, issue 21, can be seen , last excess 15th nov 2007
<http://www.hinduonnet.com/fline/fl1921/stories/20021025006712800.htm>

¹²⁴ The SPA is coalition of seven Nepalese political parties seeking to end autocratic king s rule in the country. which includes Nepali congress party, communist party of Nepal united Marxist Leninist(UML), Nepali congress Democratic, Peoples front Nepal, Nepal peasant and workers party, United left front, people front and , Nepal Goodwill party. They were joint organize against kings direct rule.

¹²⁵ Supranote 119, page 4, para 8.

¹²⁶ Supranote 124

¹²⁷ Giraja prasad koirala is the PM of recent government and he was PM of Nepal in 4 Times already after 1990.

¹²⁸ Supranote 124

¹²⁹ Ibid

human rights, press freedom, an independent judiciary, and the rule of law¹³⁰. In addition, interim constitution guaranteed the basic rights of Nepali citizen to formulate constitution for them and to participate Constituent Assembly (hereafter CA) election. The constitution transferred all power of the king as head of state to the PM and stripped the king of any ceremonial constitutional role. Under the constitution, the fate of monarchy will be decided by the first meeting of the constituent assembly¹³¹.

Human rights situation during conflict period was terrible. Many civilian killed by conflicting parties. After the April 2006, cease-fire announced by the government and Maoist, incidents of human rights violation declined but still there are many incidents of human rights violation is reporting by human rights organization. After the cease-fire child rights violation is decrease trend but still there are report about child rights violation. According to NHRC, there has been reduction in children being in forced to sit in the CPNM committees, the use of school for military activities, and in arrest, illegal detention, disappearance, killing of children, acts of abduction and compulsory participation in Maoists program and mass meeting still continue.¹³²

3.4 Impact of Armed Conflict on Children

Armed conflict across and between communities in massive levels of destruction; creates physical, human, moral and cultural. Not only are large numbers of children killed and injured, but also countless others grow up deprived of their material and emotional needs, including the structures that give meaning to social and cultural life¹³³. War violates every right of child-the right to life, the right to be with family and community, the right to health, the right to the development of the personality and the right nurtured and protected.¹³⁴

¹³⁰ Nepal interim constitution 2007, part 3.article 12-32, can be seen http://www.worldstatesmen.org/Nepal_Interim_Constitution2007.pdf

¹³¹ Can be seen http://www.worldstatesmen.org/Nepal_Interim_Constitution2007.pdf

¹³² Status of Human rights under comprehensive peace accord,, published by NHRC, june 2007.page 18.

¹³³ A\51\306, Machel Graca, report of Impact of armed conflict on children, 1996, page 15 para 29.

¹³⁴ Ibid, para 30

In case of Nepal, the majority of the children live in villages, and most of them are uneducated, deprived of health care, leisure and mental and physical development. Nepalese children continue to be victim of random as well as premeditated violence perpetrated by individuals who employ them, the state and during the armed conflict, also by the Maoists.¹³⁵ The Maoists practice of recruiting children has placed children in harm's way by exposing them directly to the armed conflict¹³⁶. There are some topics and brief discussion regarding impact of armed conflict on Nepalese children.

3.4.1 Killing and Maiming of Children

Between the start of armed conflict (1996-2007) in Nepal, over 475 children under the age of 18 have died because of Maoist war¹³⁷. Like wise more than 562 children became physically injured¹³⁸. The vast majority of these children have been killed while engage in everyday activities; sleeping, playing around the house, going to school. Death and injuries also occur because of the use of excessive force and indiscriminate firing by the security forces. In January 2006, in Nepalgunj, a 15-year-old girl was killed by a bullet while she was inside her home as a result of indiscriminate firing by police¹³⁹. In March 2006, because of aerial bombardments from helicopters by the National Army, two children were killed and six others injured.¹⁴⁰ There were some incident reported by media that security forces captured and killed the child civilian. Some children suspected of involvement with CPNM have been killed by security forces, including unarmed children accused of serving in non-combatant roles.¹⁴¹ On September 3, 2004, a group of plainclothes soldiers killed three schoolgirls in Basikhora village in Bhojpur district. These girls, aged 15 and 16 years, were reportedly on a home break from a Maoist cultural

¹³⁵ Human Rights in Nepal , A status Report 2003, page 88, By National Human rights commission, Nepal

¹³⁶ Children in the ranks, the Maoist use of child soldier in Nepal, page 10, Vol. 19 no 2, Human rights watch , February 2007

¹³⁷ Children in armed conflict, CWIN Nepal , can be seen http://www.cwin.org.np/press_room/factsheet/fact_cic.htm , last access 22 November 2007

¹³⁸ Ibid

¹³⁹ S\2006\1007, Report of the secretary-General on children and armed conflict in Nepal, page 9, 20 Dec 2006.

¹⁴⁰ Ibid

¹⁴¹ A\59\695-S\2005\72, Children and armed conflict , Report of the secretary-General, security council, sixtieth year, 9 Feb. 2005, page 10

program in which they were participating, likely by coercion, when the soldiers followed them, shot them without questioning and buried their bodies.¹⁴²

There are other causes, which lead to death of children during war. One of the major causes was mines and explosive device used by conflict parties. According to Nepal Campaign to Ban Landmines (NCBL) in 2003, there were 731 casualties among them 39 were children.¹⁴³ In 2006, 39 people killed among them 24 were children¹⁴⁴. Most of the incidents related to improvise explosive devices were related to Maoists activities. In Panauti¹⁴⁵, three children were killed in February 2006 while playing with an improvised explosive device left behind by Peoples liberation army¹⁴⁶ (Here after PLA) after an attack that same month.¹⁴⁷

There were several reports that tell Maoists were involved to kill children. CPNM has engaged in the killing and maiming of children; between January and June 2004, over 50 children were killed and 110 injured¹⁴⁸. In august 2004, Maoists rebels allegedly executed a 15-year-old boy, Santosh Biswokarma, of Mudhebas Village, Dhankuta district in eastern Nepal. Before killing him, they abducted him and tortured.¹⁴⁹ In time of conflict, many incidents reported that rebels used to torch public transport and cause of that child has been killed. On February 22, 2002, Maoist set fire to a bus filled with passengers bound for Birganj from Kathmandu. In that incident five passengers, including an 8 years old child were burned alive in the bus¹⁵⁰.

In some cases, Maoists forcefully organised cultural program in many schools. At the same time, security forces launched operation and killed schoolchildren.

¹⁴² "Four Maoist killed, Kathmandu post daily, September 9, 2004, cited by watch list 2005, on their report "Mounting violations against children in Nepal's armed conflict"

¹⁴³ Land mine monitors (International non-government organisation), can be seen <http://www.icbl.org/lm/2004/nepal#Heading21284> , last access 19 nov 2007.

¹⁴⁴ Ibid

¹⁴⁵ It is small town almost 30 kilometres away from capital Kathmandu.

¹⁴⁶ This is army wing of Maoist. they called PLA

¹⁴⁷ Supra note 142, page 10.

¹⁴⁸ Supra note 144

¹⁴⁹ From online news of Nepal , www.nepalnews.com , august 8, 2004 Cited by Watch List on their report Mounting violations against children in Nepal's armed conflict, January 2005.

¹⁵⁰ "Attack on bus: 5 passengers Burn alive", from kantipur National daily, Feb. 23, 2002, cited by Watch list on their report Mounting Violations against children in Nepal's armed conflict, January 2005.

According to National Human rights Commission (NHRC) of Nepal, in 13 October 2003, an incident took place in Sharda higher secondary school, Doti district, when Maoists were engaged in a cultural show in school premises, security forces launched an offensive and killed 10 people among them 6 were Maoist cadres and 4 were students¹⁵¹. In the same incident another five students were injured. Maoists created a terror situation, they had prohibited students and teachers from leaving the school and coerced and forced them to gather at the program. Security forces even gave no chance for surrender.

3.4.2 Rape and Sexual Abuse

Within 11 years of bloody conflict in Nepal, there were many cases reported that both parties occurred rape and sexual abuses. In some cases, National Army interrogated in army custody and at the same time, they abused and even raped. In one report by secretary-general on children and armed conflict it points out that members of security forces were involved in seven incidents. Three victims were raped in the forest; one was drugged and raped for four days. One 16-year-old girl who was sexually assaulted while being interrogated in army custody late in 2005 in the central region.¹⁵² There have been a number of reports of girls being raped by security forces during search operations. According to Nepali, non-government organisation named Advocacy Forum, on 12 Feb 2004, plainclothes army officers raped, shot and killed an unarmed 18-year-old girl, Reena Rasaili of Pokhari chauri village in Kavre district¹⁵³. According to media reports, a 16-year-old girl, studying in grade 8 in Saraswati high school of Banke district, armed police took her to the bank of the Rapti River and raped her for two hours. According to reports, the girl was returning to her home after a marriage ceremony when security personnel captured her¹⁵⁴.

There are several cases of sexual violence by the rebels too. In Kanchanpur, a 15-year-old girl was reportedly lured into the jungle in the night on the pretext of

¹⁵¹ National Human rights Commission, Nepal, annual report 2004, can be seen www.nhrcnepal.org

¹⁵² S/2006/1007, Report of the secretary-General on children and armed conflict in Nepal, page 11, 20 Dec 2006.

¹⁵³ "Caught in the middle, mounting violation against children in Nepal's armed conflict", page 27, and report by Watch list, January 2005.

¹⁵⁴ "armed police raped 16 year girl", report by Samacharpatra national daily, 31 Dec 2003.

meeting a friend. While being raped, her hands were tied and she was threatened with death. When the father complained CPNM, they called it was consensual sex¹⁵⁵. In many incidents, there was no more chance to register the case in front of police. In one case three victims of rape were reportedly pressured by CPNM not to register the case with the police, arguing that the incident were under CPNM investigation.¹⁵⁶ There are some cases reported by NHRC that girls were raped in front of her father. In one place, two gunmen with masks and black dress entered in one house at one o clock in the night. While they compelled the parents at gunpoint to sit on a cot, they brought the daughter who was sitting in corner of same room and made her take her cloths off. When she refused, the gunman tore of her clothes and raped her one after another. After that, the mother of the girl suffered serious mental trauma from the incident, which consequently led her to commit suicide by hanging herself a few days later¹⁵⁷.

Rape and sexual abuse was common phenomenon among conflicting parties. After reading many reports, I must say both compete each other for this criminal offence.

3.4.3 Disappearances and Abduction

Since the armed conflict, there has been a widespread pattern of disappearances by security forces, including children under age 18, as part of the governments counterinsurgency operations, according to Amnesty International (hereafter AI), In 130 disappearances including those of six children.¹⁵⁸ There were many cases reported that security forces involved in disappearance the child. However, security forces denied this allegation. Nevertheless, it is establish that security forces have involved in such incidents and normally they change their identity while involved in such acts.

On April16, 2002, at around midnight, security forces arrested Rajani chaudhary, a 16-year-old girl of Suryapatuwa-2, Bardiya district, while she was sleeping. A

¹⁵⁵ Supranote 155, page 12.

¹⁵⁶ Ibid

¹⁵⁷ Emergency and Human rights reports, Human rights monitoring report 2002, page 17, Published by National Human rights commission of Nepal.

¹⁵⁸ Supranote 156, page 31

group of security personal entered and searched the entire house and took her to Thakurdhaur Army camp. Villagers estimated that 50-60 security personal were present when she was arrested. She has not been seen by anybody since her arrest and her whereabouts remain unknown.¹⁵⁹ According to NHRC a residence of Dhading district, 15-year-old girl name Sarala Sapkota was disappeared by security forces in 2004 after that they killed her and buried. In 2005, a team of NHRC with forensic expert exhumed her body from the ground, just 1500-meter distance from her home. In addition, team found that only skeleton and her cloths and her father noticed her clothes¹⁶⁰. This writer also presented there as an investigator of that case¹⁶¹. Still that incident is fresh in my mind and I conclude myself there might be many cases that are not disclosed. According to International Committee of Red Cross (hereafter ICRC), there are more than 800 disappearance person who remain unaccounted in the wake of armed conflict.¹⁶²

There were frequent news reports that Maoists abducted thousands of school students and teacher. Mostly since 2002, the Maoist has abducted several thousand children, girls as well as boys. Although the majority of abducted children have been allowed to return to their homes, after a couple of weeks of ideological indoctrination and military training, they have reminded on call for operational duties and, when required, have often been attached to the main armed groups in their areas.¹⁶³

Child Rights committee also mentioned on their concluding remarks in Nepal report that abduction and forcible conscription of children by the armed groups for political indoctrination and for use as combatants, informants and cooks or porters and as human shields. The committee further mentioned that Government forces

¹⁵⁹ Ibid, page 32

¹⁶⁰ Annual report of NHRC (It is in Nepali version-unofficial translation), 2006. Page 12, published by NHRC Nepal. , can be seen www.nhrcnepal.org

¹⁶¹ I was working in NHRC as a protection officer and in charge of that team.

¹⁶² Press release by ICRC, "ICRC seeks to clarify fate of more than 800 missing persons", 14 Feb 2007, can be seen <http://www.icrc.org/web/eng/siteeng0.nsf/html/nepal-news-140207!OpenDocument>

¹⁶³ Supranote 144, page 10.

target fewer than 18 suspected of being member of the armed groups and involved in disappearance of these child.¹⁶⁴

A recent report of the United Nations Educational, Scientific and Cultural Organisation (here after UNESCO) has revealed that the latter part of Maoist insurgency saw a massive scale of abduction of students and teachers. The UNESCO report pointed out that more than 22000 students and 10000 teachers were abducted between 2002 and 2006.¹⁶⁵

On June 17, 2006, the NHRC published a list of 971 persons said to have disappeared during the armed conflict and still whose status has remained unknown. Similarly more than 300 cases related with Maoist and still their status is unknown.¹⁶⁶ Among them, there are many cases related with children disappearance. Although it is difficult to include exact number of child disappearance in this research.

3.4.4 Unlawful Detention and Torture

Child rights committee has mentioned that there are detention of children¹⁶⁷ under 2004 amendment to the terrorist and Disruptive activities (control and punishment) Ordinance (hereafter TADO¹⁶⁸). During the 1st August 2005 to 30 September 2006, there were 195 juveniles held under TADO in various places, including army barracks, police stations, prisons and high security centres.¹⁶⁹ Among the 195 children, 43 percent were below the age of 16 at the time of their arrest, the

¹⁶⁴ CRC\C\15\ADD.261, Committee on the rights of child, thirty-nine session, Concluding observation , Nepal, 21 September 2005, Para 81 , can be seen [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/9cdc0faeb06f27d9c1257018002dd2cb/\\$FILE/G0544032.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/9cdc0faeb06f27d9c1257018002dd2cb/$FILE/G0544032.pdf)

¹⁶⁵ Can be seen <http://www.mediaforfreedom.com/ReadArticle.asp?ArticleID=5973> , last visit 25 Nov 2007.

¹⁶⁶ E-bulletin volume4, number 6, 24 June 2006, published by NHRC.

¹⁶⁷ CRC\C\15\ADD.261, Committee on the rights of child, thirty-nine session, Concluding observation , Nepal, 21 September 2005, Para 81 , can be seen [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/9cdc0faeb06f27d9c1257018002dd2cb/\\$FILE/G0544032.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/9cdc0faeb06f27d9c1257018002dd2cb/$FILE/G0544032.pdf)

¹⁶⁸ TADO was antiterrorism law of Nepal. it was first adopted during the state of emergency in 2001 allowed security forces to arrest and detain persons suspected of involvement in acts of terrorism without a warrant. Under the TADO, issued in November 2001, security forces could hold individuals in preventive detention for up to one year without charge or trail and without any recourse to the judiciary. The Ordinance lapsed at the end of Sep 2006 and has not been renewed.

¹⁶⁹ Supranote 155, page 7, para 25.

youngest being 11 years old¹⁷⁰. Most of these children were detained in army barracks and did not have any contact with their families.

During the time of conflict security forces charged the children being involvement with Maoist activities. In summer 2004, Army arrested two boys Govinda pariyar and Somu bahadur Moktan, on suspicion being associated with CPNM. After their arrest, they were held for 11 days in army barrack where they were severely beaten with pipes and kicked with boots.¹⁷¹ In addition, lately they were transfer in jail.

The majority of children held under TADO were victims of ill-treatment or torture after their arrest, mainly during the initial interrogation. The method of torture included blindfolding and handcuffing, beating with sticks mainly on the soles of feet, kicking and punches on the head and the chest. Some children also reported electric shocks, water immersion until suffocation and mock executions.¹⁷²

There are many cases of re-arrest reported by different human rights groups and media. Because of that, has affect on children psychology as well. According to one nationally daily, January 11, 2004 a 17-year-old boy Naresh Maharjan committed suicide after learning that the police were planning to arrest him.¹⁷³ The boy had been detained for three months in 2002 under suspicion of being Maoist. In addition, media further wrote that he had been tortured in detention.

In some cases children has been tortured and ill treatment by both conflicting parties. In one hand security forces blame them being involved in Maoist activities and other hand Maoist blame same person in same case doing spying against them. Here is one example, which can support my above argument. The special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment, published out this case in his report.¹⁷⁴

¹⁷⁰ Ibid

¹⁷¹ "Children caught in the conflict", case of Nepal, report by amnesty international, London, 2005.

¹⁷² Supranote 155, page 8, para 27.

¹⁷³ "Student Suicide", a report from Rajdhani national daily, Nepal, 12 January 2004.

¹⁷⁴ Commission on Human Rights sixty-second session, 9 January 2006. Manfred Nowak, a special Rapporteur on Torture and other cruel, inhumane or degrading treatment and punishment, interviewed her. She was interview in 13 Sep 2005.

“Ms. D.O. aged 17, Bardiya. In or around September 2004, she was abducted from her home by Maoist and held for almost two months for training and indoctrination before she escaped and returned home. The Maoist went to her house and amputated one of the toes of her left foot, using a small knife, as punishment for running away. She and her stepmother were threatened with further mutilation if medical treatment was sought. However, after three days she was able to go health centre. Around the December 2004, when she had recovered and returned to secondary school in Goltakuri village in Dang district, six people came to her school and abducted 10 female students, including her. They were blindfolded and taken to Panchakule Village, where they had to stay overnight in two rooms. The next day the ten girls were distributed among ten different groups. She was brought to Fulbari where she was given cloths and sent to Kathmandu, to collect donations for the Maoists. Together with 14 others, she walked through the jungle for seven days. During the night she escaped and sought refuge in a temple and, although she wanted to return home, she was afraid that the Maoists would kill her. On the advice of her brother she approached a police officer to surrender and seek protection. She was detained for one night in Hanuman Dhoka district Police office where she recounted her story. The officers did not believe her and took her to the police headquarters the next day. She was blindfolded in transit, and at the headquarters, her eyes were uncovered and she was taken into a room where she was interrogated and struck repeatedly in the face. This lasted for several hours. She was taken to a cell where she was verbally abused, struck again, told to take off her clothes and threatened with hot water and stinging nettles. She refused to confess and said that they should shoot her instead. The torture answered that would be too easy, and brought out a steel rod with which they threatened to beat her. She was accused of being sent by the Maoists to spy on the police. She was questioned about her acquaintances, Maoist hiding places, and their activities. She was taken by car to show them the place where her group had camped outside of Kathmandu, but was unable to find it, and was returned to police headquarters. There two police officer pushed her head against a wall, forced her to hold her ears and squat repeatedly, and hit her in the face and stomach. Because she was bleeding from her mouth, her face was swollen and her hearing was impaired, she asked for treatment

and was taken to hospital. When she was brought back again in the police headquarters, she refused to eat the food that was provided. She was blindfolded again, and struck with a belt on her legs. She stayed blindfolded for a long period, but was not handcuffed. She remained at the headquarters for about nine days, and was taken back to District police office Hanumandhoka for about six days. Without a guardian to come and collect her, she remained in detention until human rights organisation was able to have her released. The police had warned her not to tell anyone about the beatings”.

This is only one example, many reporters pointed out that there were several cases like same nature. In May 2006, the new government publicly announced that all detainees held under TADO, including juveniles, were to be released.¹⁷⁵

3.4.5 Child Soldiers

In the 9 February 2007 report of the special representative of the secretary-General for children and armed conflict to the General Assembly, the special representative include the situation on the Nepal on the list of parties to armed conflict that recruit or use in children of armed conflict.¹⁷⁶ On this list, she specifically named the CPNM.

In situation of armed conflict, children are especially vulnerable and are most often the first victims of forced requirement. Regardless how they are recruited, child soldiers are victims, whose participation in conflict has serious implication for their physical and emotional well-being.¹⁷⁷

Both the Maoist and government have denied the recruitment and use of children. However, there are many reports tells that Maoist used large amount of children in their ranks. In addition, governments used children as a tool, like as informants. According to Secretary-General Reports, there are small numbers of recruitment of

¹⁷⁵ Supranote 155, page 8, para 28.

¹⁷⁶ A/HRC/4/45, Human rights council, Fourth Session, Report of the special representative of the Secretary-General for children and armed conflict, Radhika Coomaraswamy, page 8.

¹⁷⁷ Ibid, page 6.

children into the state security forces; however, the use of children by the security forces as messengers, spies or informants has been well documented.¹⁷⁸

Still there is no precise or accurate number of children associated with Maoist is available. However, it is believed that CPNM has recruited several thousands children over the years and that they form a large part of PLA troops, as well as large number of the cadres in the other organisation inside CPNM.¹⁷⁹ Some reports indicate that 30 percent of the Maoist militia and army are under age of 18.¹⁸⁰

There was trend that Maoist conducts both forcible and voluntary recruitment of children. During the 10 years of conflict prior to the April 2006 ceasefire, CPNM instituted special recruitment campaigns, such as the “one family, one member for the party”, where children were recruited forcibly or voluntarily.¹⁸¹ There are some examples of their method of recruitment.

Ram, a 16-year old boy from Panchthar district in the far east of Nepal, described the circumstances that led to his joining the Maoist when he was about 11 years old.

“I went to school up to class 6. I liked school. I used to stay with my grandfather; I had a stepmother and my father was often away. My grandmother did not have enough money to buy material for school, so I stopped going. After I quit school, sometimes I stayed at home, other times I worked at hotels, washing dishes. After two months, I joined the Maoists. There were many Maoists programs in my village. Two or three Maoists came to my house. My father was not there, so they took me to go culture program. Initially, I refused, but they insisted, so I went. They did not threaten me. I felt my parents did not give me enough attention.”¹⁸²

Human Rights Organisation claimed that Maoists are alleged to indoctrinate the children of Maoists who have been killed in the armed conflict in order to revenge

¹⁷⁸ Supranote 155, page 4, para 12.

¹⁷⁹ Ibid

¹⁸⁰ Supranote 156, page 37.

¹⁸¹ Supranote 155, page 5, para 16

¹⁸² Human rights watch interview with Ram, age 16, May 1, 2006. I cited from their reports “Children in the rank, the Maoist use child soldiers in Nepal”, Feb 2007. page 25

the death of their parents. With few other options for survival, these children are often extremely vulnerable to indoctrinate and politicization and may end up voluntarily joining the Maoists ranks.¹⁸³

It is believed that in Maoist rank there is 40 percent women participation¹⁸⁴ including girl child. In addition, one of the bad way of their recruitment was to take forcefully and even during school times, as well. There are few cases which may touch everyone heart. Sixteen-year-old Maya explained how she was taken from school.

“I was abducted from school, it was in school, it was lunch break, and we saw several Maoists coming. We were 9 girls there, all 16 - 18 years old. The Maoist asked us how we were doing and said that we should join their campaign. We went to our teacher and said we would not go, and teacher told the Maoists, but they threatened him, and then just grabbed us and took us away”¹⁸⁵.

There are many cases reported that Maoist used forced recruitment in village area. Sixteen –year-old Leela from the far western of Nepal told with Human rights watch in March 5, 2006,

“The Maoists first took my younger brother. He was 14-year-old. He manages to escape. He just kept crying and kept saying that he would not go with the Maoists even if they beat him. They made him sentry guard, but he was so young. So we had to decide between us in the family whom to send. Otherwise, the Maoists would have locked our house. I had to go.”¹⁸⁶

These all cases give clear picture that Maoist use large number of children for their own benefit. Maoists are denying recruiting child in their forces. Maoists

¹⁸³ Supranote 156, page 39.

¹⁸⁴ From Himal south Asia, a leading English newspaper in Nepal, can be seen <http://www.himalmag.com/2004/january/essay.htm>

¹⁸⁵ Human rights watch interview with Maya, Supranote 185, page 34.

¹⁸⁶ Human rights watch interview with Leela, Butwal, and March 5, 2006. supranote 185, page 33

Traditionally, landowners, political party workers and village elites were the first to flee fearing harassment by the CPNM. Forced recruitment by the CPNM and suspicion of the security forces alleging youths to collaborate with the CPNM propelled them to flee. As a conflict evolved, extortions, closure of schools, disruption of local commerce and failure of basic services prompted entire families to abandon their homes in numerous instances.¹⁹² Many children also fled with their parents. Many IDPs family has been in either capital of country or their district headquarters. There are many incidents that children were fear because of abduction in large scale for political uses. In June 2004, abduction in teachers and student for a peoples March in Kailai, approximately 36 teachers and 1000 students fled to district headquarters Dhangadi.¹⁹³

IDP children have been engaged in various form of worst labour. About 32000 Nepali children currently working in 1600 stone quarries, with only 30 percent of those registered with government.¹⁹⁴ According to report, conflict has led to increase child domestic workers. In many cases, girls' child had been harassed by local youths. One IDP girl spoke with Caritas team that, "even though we know this was likely to happen, we continued to do this work because our children were hungry and we had no choice".¹⁹⁵

In time of war, absence of government officials outside the district headquarters has led to lack of protection mechanism and provision of basic services for the villagers. Due to the displacement, children from all over the countries lose their rights to go to school. Not only that, there were leaving in fear environment.

3.4.7 Attack on School

Like other conflict in the world Nepalese school specially located in village area were high profile targets of the conflicting parties. In village area, the school

¹⁹² OCHA Nepal thematic report, "the internally displaced person: current status", Kathmandu 6 September 2006.

¹⁹³ Supranote 156, page 14

¹⁹⁴ Study by A Nepalese NGO, "Concern for children and environment in Nepal", cited by Caritas Nepal.

¹⁹⁵ Supranote 194.

buildings are the only substantial permanent structure. The children's right to education is seriously affected by the 10 years conflict in Nepal. Many expert beliefs that during the conflict, education can create a zone of security for children. Graca Machel put on emphasis on same basis in her book "the impact of war on children". She mentions that education can be as simple as organised play. Recreational activities such as sports, drawing and music can help children cope with the trauma of conflict. Informal classes or play sessions help re-establish daily routine and give children more confidence in themselves, their families and their community.¹⁹⁶ I do fully agree with her remarkable thoughts. Nevertheless, in case of Nepalese conflict many children in rural areas have not chance to see school because of fear of attack. According to UNICEF School were target of attacks and grounds for Maoists recruitment and political indoctrination, discouraging many families from sending their children to school¹⁹⁷.

Many causes made school closure. In one hand, Maoists abducted students in large scale for their political benefit and other hand they took forcefully donation from teachers. The abduction or forced participation of pupils and teacher in political indoctrination programmes and rallies, the use of school buildings as army barracks or temporary shelters by both the security forces and CPNM, the destruction of school during military operations, the force closure of educational facilities and the forced and illegal tax collection imposed on teacher, and threats by CPNM against teacher are examples of ways in which the right to education has been severely limited.¹⁹⁸

Rural area schools were almost zone of war. In some schools, Maoist made trench as well. In addition, for that they used students and teachers too. According to media, in one remote hilly district Achham Maoist were digging trenches (200 meter long and 3 meters deep) inside 58 schools to facilitate retaliation against

¹⁹⁶ The impact of war on children, Machel, G., C.hurst and co. publishers Ltd, London, 2001. Page 93

¹⁹⁷ UNICEF humanitarian report 2007, UNCEF publication, page 154

¹⁹⁸ Supranote 143, page 10.

security forces in the case of attack.¹⁹⁹ Report further mentioned that Maoist have coerced students, teachers and parents to participate in the digging effort.

In April 2004, security forces opened fire from pod-mounted guns on a Maoists meeting on the premises of Bidhya Mandir higher secondary school in Binayak Village Achham grounds, killing and injuring several children, and forcing other students to witness horrific violence.²⁰⁰ Following the incidents, various school in that area reportedly remained shut for several days.

According to CWIN, during the period of January 2005 to Dec 2006 more than 3840 schools were affected by conflict. It was recorded that 3735 school were closed at least once. Bomb explosions affected 32 schools and at least eight schools were destroyed by setting fire.²⁰¹ In terms of data in total period of armed conflict might be more.

In November 2003, an investigation team leading by NHRC with various child rights NGO visited Bajura and Achham, two of Nepal's remotest and poorest districts. Team had received from local source that nearly 70 percent of the schools in those two districts had shut down due to the tense situation created by the armed conflict.²⁰² This situation may reflect condition of several schools located in rural areas during conflicting periods.

There was several reports mention that government security forces also made their temporary barrack near school and some were inside school. According to report of SG of children and armed conflict in Nepal some school have been occupied by security forces in various part of the country, such as Khotang, Myagdi, Syangja, Tanahu, Bara, Kathmandu, Rukum, Banke and Sindhuli districts. Since the April 2006 cease-fire, most of the facilities occupied by the national army been vacated.²⁰³

¹⁹⁹ "Maoist dig trench in school in Achham", the kantipur National daily, Oct 29, 2004.

²⁰⁰ "school closed after clashes", the Himalayan news service. Cited by Watch list on children and armed conflict, January 2005, page 23.

²⁰¹ Children in Armed conflict, fact sheet, www.cwin.org.np, last access 9 Dec 2007.

²⁰² Supranote 157, page 25.

²⁰³ Supranote 156, page 11

Many organisations including NHRC have appeals several times to Maoist and government during the conflicting period to improve situation and not harm to children. In 2nd march 2004 NHRC asked the CPNM not to repeat activities such as forcing school children to participate their activities, pressurizing teachers to teach their janabadi education²⁰⁴ (peoples education) and conducting militia activities in school premises, and asked them to desist anything that infringes the right of the children to educate and that effect their security.²⁰⁵

Both parties harassed schoolteachers. In one hand Maoist forcefully took donation fro them and in other hand security forces charged them being supporter of Maoist. However, if they denied doing so they could have faced threat and attacks by the Maoist. There were some brutal cases, which show how teacher taught in children.

In 2002 Lamjung district, the principal of Padini Sanskrit high school, Muktinath Adhikari was teaching a lessons when armed Maoists entered his classrooms, dragged him out and brutally killed him. The armed Maoists beat him, tied his hands and feet, dragged him to a nearby hill, hung him from a tree with a scarf around his neck, stabbed him in the shoulder and abdomen and shot him in head.²⁰⁶ Rebels not only killed him but also students were taken from the school compound and forced to listen to speech, during which Maoists accused the Principle of being a government informant, failing to collect funds from teachers for the Maoist.

Because of all reasons, many children have not access to education in time of conflict.

3.4.8 Childrens Health and Psycho-social Trauma

The definition of health adopted by the World Health Organisation (hereafter WHO) in its constitution is quite broad and includes physical as well psychological

²⁰⁴ Janabadi education is a different education system than government curriculum. It was lunch by Maoist –student wing, ANNFSU-R(All Nepal national free student union-revolutionary)

²⁰⁵ NHRC, Annual report 2004, page 26

²⁰⁶ "Rebel Brutality on teachers, political parties silent" Himal bio month Magazine, February 1-15, 2002, cited by Watch list January 2005 on their Nepal report, page 25.

aspects. According to WHO, health is a state of complete physical, mental and social well being and not merely the absence of disease or infirmity.²⁰⁷

Nepali children in rural area still lives several days away from functioning health system. A large segment of the population relies on traditional methods.²⁰⁸ According to UNICEF pneumonia and diarrhoea are the two leading cause of death among children under five in Nepal. According to UNICEF in 2005, under-five mortality rate is 74 within per 1000 child.²⁰⁹ Health indicator in Nepal was already among the worst in the world before the armed conflict. The armed conflict has further hampered access to health care services, particularly in rural area.

According to report of secretary-general on children and armed conflict in Nepal, humanitarian access to health service has been affected by the conflict in a number of ways. Health workers in several districts reported that they were forced into providing intelligence on CPNM activities by government and military officials.²¹⁰ In some rural area government military blocked medicine because of health post, provide medicine to CPNM.²¹¹

Maoist rebels also major cause of violating rights of health of child. Before April 2006 cease-fire, CPNM had been demanding around 25 percent of drugs and other medical consumables from health posts.²¹² In addition, more than that the Blockade imposed by CPNM has seriously affected the development of aid program.

The psychological effect of war on children is describe in terms of known psychological reaction patterns ranging from aggression and revenge to anxiety, fear, grief and depression.²¹³ Psychological wounds and trauma suffered in childhood may affect the individual child and, as a consequence, the society for

²⁰⁷ Constitution of WHO, can be found http://www.who.int/governance/eb/who_constitution_en.pdf, last visit 12 Dec 2007

²⁰⁸ Can be seen http://www.savethechildren.net/nepal/key_work/rural_health.html

²⁰⁹ UNICEF , Nepal country web , http://www.unicef.org/infobycountry/nepal_nepal_statistics.html

²¹⁰ Supranote 156, page 12

²¹¹ Ibid, page 12

²¹² Ibid, page 12

²¹³ Cole p. Dodge and magne R., Reaching children in War Sudan, Uganda and Mozambique., scandevian institute of African studies, Upasala 1991, page 29

decades.²¹⁴ In addition, writer further describes that forced separation from parents or guardians and displacement from home cause traumatic stress reaction.

In time of conflict most of the child soldiers were subject to violence to make them fight-they had seen beating, shooting, rape, and more than half said they had killed.²¹⁵ This fact was drawn from one research done by German researcher. The researcher found that about a third of children were suffering from post-traumatic stress. This report may apply in case of Nepal child soldier too.

In one report UNICEF notes that, “children in armed conflict routinely experience emotionally and psychologically painful events such as the violent death of parent or close relative; separation from family; witnessing loved one killed or being tortured; displacement from home or country; exposure to combat; shelling and other life threatening situation; acts of abuse such as being abducted; arrested; held in detention; raped; tortured; disruption of school routines and community life; destitution and uncertain future.”²¹⁶

In Nepal former child soldier have emotional and psychological problem. The children cannot sleep at night. They have eating problems, anxiety, and fear about the future and about themselves.²¹⁷

3.5 Conclusion

The majority of Nepalese children live in rural areas, and must have no chance to go school, deprived of health care, leisure and mental and psychological development. Many children are engaged in the worst form of child labour. Many children suffer from malnutrition that makes them more vulnerable of disease. Many girls have suffering from trafficking, sexual exploitation and forced

²¹⁴ Ibid

²¹⁵ From journal of American medical association, august 2007, cited by www.bbc.co.uk, “child soldier need mental help”, can be seen <http://news.bbc.co.uk/2/hi/africa/6925384.stm> , last visit 12 Dec 2007

²¹⁶ Trauma hunts children in war Zones, may 31 2007, can be seen http://www.essex.ac.uk/armedcon/story_id/000483.html

²¹⁷ Supranote 140 , page 60

prostitution. It is general scenario of the child since decades in most rural areas in addition the armed conflict has further hampered child rights.

In the time of armed conflict, many reports show security forces using excessive force in their operation. Besides that, there were many cases of unlawful arrest of children, illegal detention in the army barracks as well as torture by security forces.

Both conflicting parties were involved in killing and maiming of children in time of conflict. There are many facts that girls were raped and subject to other forms of sexual violence. Children have been disappeared and detained by government security forces.

Children health was not concern of conflicting parties in time of war. They avoided the child protection. There was no proper arrangement of supply of food grains and medical treatment. In one-hand rebels, looting medicine and other hand security forces banned medical supply in many rural areas. That makes harder to get easy excess to medicine in rural areas for children. School should be Zone of Peace but conflicting parties made in zone of war. Those rebels not only abducted large scale of students, forcefully recruited children in their arms force and killed the teacher. That affects children right to education. Children and their families are forcibly displaced due to death threat, forcefully donation, killing of family members, destruction and looting of homes and threat of recruitment by Maoist.

Conflicting parties used landmines in large scale. They are many reports that show many children died and injured because of landmines. In addition, conflicting parties should responsible for that. Mostly rebels used landmines and explosive bombs in unknown position, in many cases children's playground, road, bridge and many other public places. Moreover, they must know small children have not any knowledge about that.

Nepal is a party of CRC, and it is widely recognised as critical milestone in the legal protection of the children. While looking all the facts relating impact of armed

conflict on children, Nepalese government has failed to protect child rights in time of conflict.

Humanitarian law especially additional Protocol II, which provides that children who have not attained the age of 15 years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities. However, in case of Nepal conflict, the elaborate protection of international humanitarian law was marginalized. I must say that children all over the country were leaving in fear and insecurity, and under threat of violence, causing mental health problem and psychological trauma.

In Nepal gross violation of children's right occur, the accountable of those who are directly or indirectly responsible should be established under relevant international or national provisions. There is a fact that Nepal is a party of major human rights treaties and humanitarian law as well.

A culture of respecting the law and the human rights should be developed. Therefore, it seems to be in the interest of the state party to evaluate the past to initiate the process of talking action against the guilty and to protect, as a future strategy, basic human right and humanitarian law. Similarly, the non-state actor involved in the abuse of rights of the children cannot claim moral legitimacy; nor can they claim that their actions are mean to lead the state towards greater democracy and justice.

4 CHAPTER FOUR

Monitoring, Implementation and Enforcement of International Law Concerning Children in Armed Conflict

This chapter briefly looks into legal mechanism and various UN bodies that have a role to play in monitoring and implementation of international law concerning child rights. These organisations include the Charter-based bodies and treaty based bodies of UN. Among them most of the human rights treaty has own monitoring system. Besides that, Security Council has shown proactive role on issues of children in armed conflict through several Security Council resolution. In this chapter I am briefly analyse this provision related with children in armed conflict and especially case of Nepal.

The enforcement of international law has traditionally been an obligation of states that are parties to a treaty. In this chapter, I am going to discuss briefly, on what Nepal is doing to protect children in armed conflict. However, I am going to more emphasis on International monitoring mechanism rather than national effort.

4.1 Treaty-Based Bodies

Seven human rights treaty bodies monitor implementation of the core international human rights treaties.²¹⁸ For the purpose of children's rights and especially children in armed conflict, I am going to emphasis on monitoring mechanism within CRC, CCPR and CAT.

4.1.1 The Committee on Rights of Child

The committee of the Rights of child is established under article 43(1) of the CRC. It composed on ten members who do not represent their countries but they act in

²¹⁸ It contains Human rights committee(CCPR), committee on Economic, social and cultural rights(CESCR), committee on elimination of racial discrimination(CERD), committee on the elimination of racial discrimination against women(CEDAW), Committee against torture(CAT), Committee on the rights of child(CRC) and Committee on migrants worker(CMW). Although there are two more international human rights treaties passed by GA but still have not yet entry into force namely person with disabilities and enforced disappearance.

personal capacity.²¹⁹ The member of committee elected for a period of four years.²²⁰ Part ii of CRC set out the frameworks for the implementation mechanism as to assess the progress made by state parties regarding the fulfilment of their legal obligation under the convention. State parties have obligation to submit its report to the committee, which should two years after the ratification of CRC and every five-year there after.²²¹ The committee may request further information from state parties.²²² The committee must itself submit reports to United Nations General Assembly (Hereafter UNGA) through economic and social council in every two years.²²³ The committee may make suggestions and general recommendation based on information received under article 44 and 45 and those are to communicate to the state parties and to the UNGA.²²⁴ The committee have not any authority to seek individual complain.

The committee in its second session in 1992 discussed on children in armed conflict and the committee acknowledged the importance to this issues.²²⁵ After that committee has recommended different general comments but never repeated issues of children in armed conflict.

Nepal became a party of this convention in 14 September 1990.²²⁶ Nepal submitted its first initial report to committee in 10 May 1995, although it had to submit reports in 1992.²²⁷ Moreover, that time Nepal was not in situation of conflict. Nepal submitted its second periodic report in 3 December 2004.²²⁸ In thirty-ninth session of Committee has given concluding observation on Nepal's second periodic report.²²⁹ The committee has recommended on matter of children affected in armed conflict. The committee recommends that the Nepal should develop a comprehensive policy and program for implementing the rights of children who

²¹⁹ CRC article 43(2)

²²⁰ CRC Article 43(6)

²²¹ CRC article 44(1)

²²² CRC article 44(4)

²²³ CRC article 44(5)

²²⁴ CRC article 45(d)

²²⁵ CRC\C\10, 13 Oct 1992, can be seen

<http://www.unhchr.ch/html/menu2/6/crc/doc/days/conflict.pdf>

²²⁶ Can be seen <http://www2.ohchr.org/english/bodies/ratification/11.htm>

²²⁷ CRC\C\3 Add34, 10 may 1995

²²⁸ CRC\C\65, 3 Dec 2004

²²⁹ CRC\C\15, 21 September 2005.

have been affected by conflict, and allocate human and financial resources accordingly.²³⁰ In addition, committee further recommended that criminalize abduction, recruitment and use of children for military purposes by any armed forces or armed groups and establish a separate rule of engagement for its security forces with regard to children.²³¹

4.1.2 The Human Rights Committee

The human rights committee is the human rights body of independent experts that monitors implementation of the ICCPR. The committee composed of 18 members and they elected for four years.²³² All states parties are obliged to submit regular reports to the committee on how the rights being implemented.²³³ State must report initially one year after acceding to the covenant and then whenever committee request.²³⁴ The committee examine each report and addresses its concern and recommendation to the state party as a concluding observation.²³⁵ In addition, there is provision for inter-state complains regarding violation of rights regarding this convention.²³⁶ Besides that first optional protocol to the covenants gives the committee competence to examine individual complains.²³⁷ Like same second optional protocol dealt with issue of abolition of death penalty. Article 24 of ICCPR deals with child rights, in this regard committee have obligation to analyse issues of child rights.

Nepal became a party of ICCPR and its first optional protocol in 14 may 1991.²³⁸ In addition, Nepal became a party of second optional protocol in 4 March

²³⁰ Ibid, page 20

²³¹ Ibid, page 20

²³² ICCPR article 28 (1) and 32(1)

²³³ ICCPR article (40)

²³⁴ Ibid

²³⁵ Ibid

²³⁶ ICCPR article(41)

²³⁷ ICCPR optional protocol regarding individual complain mechanism, article (1), entry into force 23 March 1976

²³⁸ Can be seen , <http://www2.ohchr.org/english/bodies/ratification/4.htm> , last visited 13 Dec 2007

1998.²³⁹ Nepal submitted its initial country report in 18 May 1994.²⁴⁰ The committee gave its concluding observation to Nepal in 10 November 1994.²⁴¹ Until that period, Nepal had not involved in armed conflict. In this regards not any meaning of further discussion about children in armed conflict. In addition, there is not any individual complain from Nepal to the committee regarding children in armed conflict.

4.1.3 The Committee Against Torture

The convention against torture establishes a committee, which consists of ten experts of high moral standing and competence in the field of human rights.²⁴² As other committee, all states parties are obliged to submit regular reports to the committee. State must submit initially one year after acceding to the convention then every four years.²⁴³ The committee may also consider individual complaints and inter-state complaints as well.²⁴⁴

Being a party of this convention, Nepal has an obligation to submit its report. In 16 Dec 1993, Nepal submitted its initial report.²⁴⁵ Nepal submits its second periodic reports in fifth may 2004, it includes second, third, and fourth due reports as well.²⁴⁶ Committee concluded its observation of state report of Nepal was November 2005.²⁴⁷ Committee suggest for government of Nepal that should take immediate steps to insure that all arrests and detentions are systematically documented, in particular of juveniles.²⁴⁸ Committee has shown emphasis on issue of child soldier. Committee has mentioned that the state party should take effective measure to prevent security forces using children as spies and

²³⁹ Can be seen, <http://www2.ohchr.org/english/bodies/ratification/12.htm> , last visited 13 Dec 2007

²⁴⁰ CCPR\C\74, 18 May 1994, can be seen

<http://daccessdds.un.org/doc/UNDOC/GEN/G94/166/74/PDF/G9416674.pdf?OpenElement>

²⁴¹ CCPR\C\79, 10 November 1994

²⁴² CAT article 17(1)

²⁴³ CAT article 19(1)

²⁴⁴ Ibid, article 22

²⁴⁵ CAT\C\16, 16 Dec 1993

²⁴⁶ CAT\C\33, 14 January 2005

²⁴⁷ CAT\C\Nepal, 13 April 2007,

²⁴⁸ Ibid, para 22

messengers.²⁴⁹ Committee concerned on abduction of children by CPNM and committee further emphasis on reintegration of former child soldier into society.²⁵⁰

4.2 Charter- Based Bodies

Charter-based bodies include the former commission on Human rights, the human rights council, and special procedure. The human rights council, which replaced the commission on human rights, held its first meeting in 19 June 2006. Special procedure is the mechanism established by the commission on human rights and assumed by the human rights council to address either specific country situation or thematic issues of human rights. Special procedures are an individual a special rapporteur, or representative, or independent expert, or a working group. Special procedure mandates to examine, monitor, advice and publicly report on human rights situation either country or thematic mandate. There are 28 thematic mandates and 10 country mandates.

Purpose of my research is to find out children situation in time of conflict in Nepal. In this regards I am not going to see all thematic issues but I am going to look briefly on relevant to my research. Here is some special procedure of human rights commission²⁵¹ through which they visited Nepal within Conflicting period.

4.2.1 Special Rapporteur on Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment , Manfred Nowak Mission to Nepal

The special rapporteur on the question of torture undertook a visit to Nepal from 10 to 15 September, at the invitation of government.²⁵² In his report, the rapporteur calls on the Maoists to end torture and other cruel, inhumane or degrading treatment or punishment and to stop the practice of involuntary recruitment, in particular of women and children.²⁵³ In his report, he concluded that the police, armed police and royal Nepal army systematically practise torture. In addition, he further added

²⁴⁹ Ibid, para 33

²⁵⁰ Ibid

²⁵¹ Human rights commission was replaced by human rights council.

²⁵² E\CN.4\2006\6\Add.5, 9 January 2006.can be seen

<http://www.ohchr.org/EN/countries/AsiaRegion/Pages/NPIndex.aspx> , last visit 15 Dec 2007

²⁵³ Ibid, para 34.

that impunity for acts of torture is the rule, and consequently victims of torture and their families are left without resource to adequate justice, compensation and rehabilitation.²⁵⁴ He mentioned that he found 14 years boy with adults in prison.²⁵⁵

4.2.2 Representative of the Secretary-General on Human Rights of Internally Displaced Persons, Walter Kälin Mission to Nepal

The representative of the Secretary-General on the Human Rights of internally displaced persons undertook a mission to Nepal from 13 to 22 April 2005.²⁵⁶ In his report, he recommended government of Nepal o make particular efforts to facilitate the enrolment of displaced children in schools even when they cannot produce the necessary documentation.²⁵⁷ He focused on enrolling of girl children.²⁵⁸ He further recommended to Nepal government in the issue of internally displaced children to ensure that school admission, access to health care and other service is granted on a needs basis and does not depend on registration.²⁵⁹

4.2.3 Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution, Ms Asma Jahangir-Mission to Nepal

At the invitation of Government, the special rapporteur conducted a mission to the Nepal from 5 to 14 February 2000.²⁶⁰ In her report, she mentioned about killing of children by conflicting parties.²⁶¹ She recommended the government of Nepal must investigate every single incident of children being killed and ensure that those found responsible for extrajudicial, summary or arbitrary execution are brought to justice.²⁶² In her report, she called Maoists leadership not to use children in any armed activities.²⁶³

²⁵⁴ Ibid, para 31

²⁵⁵ Ibid, para 28

²⁵⁶ E/CN.4/2006/71/Add.2 , page 2

²⁵⁷ Ibid, page 21

²⁵⁸ Ibid, page 21

²⁵⁹ Ibid

²⁶⁰ E/CN.4/2001/9/Add.2, 9 August 2000, Commission on Human rights Fifty-Seventh Session,

²⁶¹ Ibid, para 31

²⁶² Ibid, para 70

²⁶³ Ibid, para 71

4.2.4 Special Representative of Secretary-General for Children and Armed Conflict

The GA adopted resolution 51/77; it recommended that the SG appoint for a period of three years a special representative on the impact of armed conflict on children. The SG appointed Mr. Olara A. Otunnu as his special representative for children and armed conflict in September 1997.²⁶⁴ Ms. Radhika Coomaraswamy assumed the position of special representative of the SG for children and armed conflict in April 2006.²⁶⁵ She visited some conflict-affected countries but she has not been Nepal as a special representative of SG for children and armed conflict.

4.2.5 Security-Council Working Group on Children and Armed Conflict

The Security-Council working group on children and armed conflict established in July 2005 in accordance to the Security-Council resolution 1612(2005).²⁶⁶ In this resolution Security Council mention monitoring and reporting mechanism in six grave abuses. These are killing or maiming of children; recruiting or using child soldier; Attacks against schools or hospitals; rape and other grave sexual violence against children; abduction of children; denial of humanitarian access for children.²⁶⁷

The Secretary-General has submitted to the working group about Nepalese children situation in 20 Dec 2006.²⁶⁸ This report prepared accordance with the provision of SC resolution 1612(2005), covers the period from 1 August 2005 to 30 September 2006.²⁶⁹ Working group recommended the Nepalese government on several issues of children affected by armed conflict. Among them, one is very crucial in terms of to get justice. Working group urged Nepali government to investigate all allegations of abductions, killing and maiming, attacks on schools and hospitals, sexual violence and denial of humanitarian access, and to prosecute the perpetrators of

²⁶⁴ Can be seen <http://www.un.org/children/conflict/english/the-office.html>

²⁶⁵ Ibid

²⁶⁶ Can be seen <http://www.un.org/children/conflict/english/security-council-working-group.html>

²⁶⁷ S/RES/1612(2005), 26 July 2005

²⁶⁸ S/2006/1007

²⁶⁹ Ibid, para 1

such acts.²⁷⁰ Working group recommended to Maoist should immediately end the practice of recruiting, using children and to separate children from their ranks.²⁷¹ Working group recommended not only government but also World Bank, One of the important recommendations to the World Bank and donors' community. World bank and donors ensure that sufficient resources are made available to support programmes for the release, return and reintegration of the children associated with armed groups into their communities, with due consideration of the long-term requirements of such programmes for children.²⁷²

4.3 The United Nations Mission to Nepal (UNMIN)

The United Nations Mission to Nepal (hereafter UNMIN) established in response to request by the government and CPNM in their letters to the secretary-General of 9 August 2006. UNMIN is a special political mission established by the United Nations Security Council resolution (Hereafter UNSCR) 1740 to support the peace process in Nepal.²⁷³ UNMIN officially began its work from 23 January 2007 for 12 months from date of SC resolution.²⁷⁴ UNMIN has four different mandates to support peace process. Among them to monitor the arm and armed personal of both armies, provide technical assistance to the election commission, assists the monitoring of cease-fire arrangements and lastly to assist the conflicting parties for arrangement arms and armed personal.²⁷⁵ In agreement between Nepal and UN, there was not any specific mandate to UNMIN on children issues. However, UNMIN has child protection officers at its headquarters and regional offices in Nepal. The focus of child protection officers is to support the reintegration of minors from the Maoist army.²⁷⁶

²⁷⁰ S\AC.51\2007\8, Para 15 B(ix), page 3

²⁷¹ Ibid, para 15 (c)

²⁷² Ibid, para 16(a)(i)

²⁷³ SC\8942, Security Council 5622nd meeting, 23 January 2007

²⁷⁴ Ibid

²⁷⁵ Ibid, para 1

²⁷⁶ Can be seen <http://www.unmin.org.np/?d=activities&p=child>, last visited 18 Dec 2007

4.4 Office of the United Nations High Commissioner for Human Rights (UNOHCHR) in Nepal

OHCHR in Nepal established in April 2005 according to agreement between UNOHCHR and government of Nepal. The representative of high commissioner arrived in Nepal on 7th^{May} 2005. According to agreement, UNOHCHR has set up office at different locations in Nepal. Main mandate of OHCHR is to monitor human rights situation throughout the country and including carried out investigation.²⁷⁷ OHCHR-Nepal office report on 16 September 2005, mentioned that children situation in armed conflict in Nepal.²⁷⁸ In Dec 2007, OHCHR-Nepal published another report one year after the comprehensive peace agreement. In this report, OHCHR mentioned that since the cease-fire and especially since the signing comprehensive peace accord, certain types of violations and abuses against children have decreased significantly.²⁷⁹ Report further mentioned that there are many challenges to strengthening child protection and the protection of child rights.²⁸⁰

4.5 The United Nations Childrens Fund (UNICEF) in Nepal

United Nations Children's fund (hereafter UNICEF) is the only UN organisation dedicated exclusively to children. UNICEF was established on 11 December 1946.²⁸¹ UNICEF initiated co-operation with Nepal in 1964.²⁸² Today UNICEF Nepal program is one of the 18 largest UNICEF programmes in the world.²⁸³ UNICEF in Nepal to respond to the ongoing conflict situation, the decentralised action for children and women programme is also being expanded in the conflict-affected areas to address the right of children affected by the armed conflict.²⁸⁴

According to UNICEF report in 2006, the present situation provides a good opportunity to promote the return of "children associated with armed forces and

²⁷⁷ Can be seen , <http://nepal.ohchr.org/en/index.html> , last visited 18 Dec 2007

²⁷⁸ A/60/359, Report of the OHCHR on the human rights situation and the activities of her office, including technical cooperation in Nepal, 16 Sep 2005, page 13.

²⁷⁹ Ibid, page 20

²⁸⁰ Ibid,

²⁸¹ UNGA resolution 57(1), 11 Dec 1946

²⁸² Can be seen, <http://www.un.org.np/agencyprofile/profile.php?AgencyID=3> , last visited 18 Dec 2007.

²⁸³ Ibid

²⁸⁴ Ibid

armed groups” and internally displaced children to their communities.²⁸⁵ In addition, mechanism for reconciliation is needed to raise awareness that returning children are victims of the conflict.²⁸⁶

4.6 Conclusion

In this chapter, all of the UN agencies concern was reviewed. In addition, all of them recommended state to protect and promote children’s rights. In this regards, theses reports showed there was impact on children during conflicting period. Especially all mentioned in time of conflict there was large scale of disappearance and abduction of child, illegal detention, child soldier, killing, maiming, and sexual abuse of children in Nepal.

The enforcement and monitoring mechanisms of the United Nations treaty system are in need of an overhaul. The periodic reporting system has particular weakness there is backlog of reports. The reports system themselves often lack detail and there are insufficient resource to ensure adequate follow-up of the recommendations. Within UN, monitoring system relevant committee has a major role to protect and promote children right. However, the committee cannot guarantee compliance; its concluding observations have a major role to play in focusing state parties’ attention on the key weakness in their implementation mechanism. Although I am fully convinced, that issued raised by the committee on the rights of child is indicative one of the key strength of CRC.

One of the important monitoring mechanisms is to appoint special rapporteurs to report on human rights mechanism within particular themes. In case of Nepal, there were some rapporteurs visited Nepal and submitted their reports in line agency. Although they did their important mission but impact of their work in case of children in Nepal need to be assessment. In addition, in some cases their worked overlapped each other within UN agencies. UN agencies involved to monitor the child’s rights in time of conflicting period and attempted interventions, unfortunately have not improves the lives of children during those periods. In this

²⁸⁵ Situation of children and women in Nepal 2006, report of UNICEF, KATHMANDU

²⁸⁶ Ibid

regards, current approach of UN monitoring bodies is not sufficient especially in critical period. In fact, violence against children continues insistently on the ground.

It is fact that neither state nor treaty bodies are always capable or willing to enforce human rights. However, responsibility of enforcement goes to a variety of local, national, regional and international bodies. In addition, Asia has no regional monitoring mechanism of human rights.

In this situation, I must remember that the Vienna Declaration at the 1993 World conference on Human rights emphasised the pressing need for international cooperation on children's right, observing, "The right of child should be a priority in the United Nations system-wide action on Human rights." In 2002, in a world fit for children, the global community agreed a set of specific targets for improving children's live. To remember all these things, I like to mention the objective of State and international community should not be just well intentioned aspirations but realistic and attainable objectives.

5 CHAPTER FIVE

Conclusion and Recommendations

This thesis has attempted to address many aspects of impact of armed conflict on children of Nepal. In addition, I a review of international law concerning child civilian and international monitoring mechanism was made. In this chapter, I only address the brief description of central point of my thesis and I am not going to repeat which I already mentioned in previous chapter.

In Nepalese armed conflict, children were the most helpless victims. Nepal has a party of the convention of the rights of child and in addition, Nepal is a party of major human rights treaties. In this research, I outlined the conditions of children in Nepal during the armed conflict and how the child rights convention was violated. More than 500 children were killed. The causes of death were shooting, explosions, landmines and extrajudicial killing. We all know article 6th of CRC guarantees the right to life to every child. In the same time, large numbers of children were wounded. They have not proper medicine so among them many children became severe physically disable. There were many children have deprived from education and health. Many schools and hospital has attacked. Because of conflict, many children have displaced with their families. High scale of children abducted and in many cases, they put in illegal detention. Other shadow part of conflict was girls being raped and killed. Those children who leave in village they were always live in fear condition in addition large scale of village children became child soldier.

International law seeks to provide child civilian with protection and care both because children are regarded as a part of the general civilian population and also because children are one of the more vulnerable groups in population. Because of this fact, International law provides special protection and assistance. In addition, In Nepal too most of all UN agencies had focused their wok in Nepal during the war. Nevertheless, children situation remains same in many ways. Although they have

positive affect to aware between conflicting parties and authority about Child rights. Article 38 of CRC mentioned that state party should take all feasible measures to ensure protection and care of children who are affected by armed conflict. However, question in my mind “did Nepalese government take all feasible to protect child in time of war? My simply answer in not. In addition, like same rebels have not taken seriously about child protection in time of war. They were also major causes of child rights violation and abuses in Nepal.

Lastly, I want to mention that the impact of armed conflict on children must be everyone’s concern and everyone’s responsibility. One of each individual, each institution, and us must initiate and support global action to support and protect children.

To state under consideration in this work, I am going to recommend following issues. These are,

- Those involved in committing crimes against children under international law should receive particular attention in transitional justice mechanisms.
- There should not be any amnesty mechanism for those involved in crime against children in time of conflict.
- Children who are accused of crimes allegedly committed while they were associated with rebels should be considered primarily as victims of offences, not only as perpetrators. These children must be treated accordance with international law in a framework of restorative justice and social rehabilitation, consistent with international law. Any judicial proceedings involving child soldiers must be within a framework of restorative justice that guarantees the physical, psychological and social rehabilitation of the child.

- Still in Nepal there is not any truth seeking mechanism, in this context there will need to establish truth-seeking and reconciliation mechanism. In addition, children's involvement should be promoted and support and their rights protect throughout the whole process.
- While doing disarmament, demobilisation and reintegration (here after DDR) process, special provision should be made for children. These should include special measures to ensure children's protection from exploitation and re-recruitment and address the special needs of girls and children with disabilities.
- Child soldier must be protected from arbitrary detention, torture and other punitive measures, in accordance with the convention on the right of the child and international juvenile justice standards.
- Children who have been affected by conflict and children who have been associated with rebels are likely to have a variety of health-related needs. As soon as release process, all children should undergo assessment of their physical and psychological trauma.
- Education, vocational and skills training or opportunities should be granted to all conflict affected children.
- Educational activities should take into account the children's lost educational opportunities. Children with disabilities should be treated equally with others.
- For those responsible for unlawfully recruiting or using children in time of conflict should be brought in front of national court in accordance with international law. States should ensure that perpetrators of violence against children including sexual violence against girls are prosecuted.
- Nepal should ratify Statue of Internal criminal court.

- Nepal government should invite special representative of secretary-general for children and armed conflict.
- There should be no discrimination based on age, gender, political or religious, ethnicity or caste based while release and reintegrate of children.
- There should be strong monitoring mechanism while release, reintegrate and reconciliation process. In addition, for that process, National Human rights commission, UNOHCHR country team and UNICEF country team should involve as well monitor jointly and constantly.
- Nepal government should create conditions conducive to the return in safety and with dignity of the persons including children displaced from their home. In addition, government should make particular efforts to facilitate the enrolment of displaced children in school.
- Nepal government should allocate the maximum resource possible for children, including health, education, sanitation, nutrition and water. In addition, international community has special responsibility to make resource available to meet the needs of Nepal's conflict affected children.
- Human rights treaties bodies should enhance their focus on child rights in conflict situation in reviewing government reports. Child s rights committee should enhance their focus on conflict situation and conflict affected child rights while reviewing government reports. In addition, there should be effective and timely follow up or monitoring mechanism in conflict situation.
- Children have a right to peace. Peace is every child rights. In this regards Let us claim children as “Zone of Peace” in Nepal.

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